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SUMMARY JURISDICTION OF COURTS OVER ATTORNEYS.

This is a practice which seems to be lost sight of, to a great extent, and yet it is well settled law. It frequently happens that some attorneys get possession of papers, through the confidence and trust reposed in them by their clients, or money comes into their hands for the same reason, and it is retained to satisfy an unconscionable demand for a fee. The papers may be very important and a great hardship result, if not delivered over at once. By this process, the court may compel the attorney to produce the papers and if he sets up a claim, it may at once be heard, or, the papers left in the hands of the court till the matter is heard, or, released to the person showing a right to their possession, by the giving of security to answer the demand of the attorney, which he will be compelled to establish in that court. He has every opportunity to be heard. There is absolutely no hardship in it, and the practice is one which may be of frequent great importance. "The Summary Jurisdiction," said Chief Justice Durfre, in Anderson v. Bosworth, 8 Atl. Rep. 339, "evidently originates in the disciplinary power which the court has over attorneys as officers of the court. The opinion seems to have been prevalent at one time that the jurisdiction extended only to attorneys employed as such in suits pending in court to hold them to their duty in such suits, but a more liberal view has obtained, and it is now well settled, that the jurisdiction extends to any matter in which an attorney has been employed by reason of his professional character. In general, the jurisdiction applies only between attorney and client."

In the above case the petition was not made by the client, but by the opposite party. The attorney had received money from his client, the defendant in a suit, to be applied towards the settlement of the suit, and the attorney had given a receipt for the money to this effect. This receipt the client passed over to the plaintiff as so much money in the client's hands applicable to the settlement. The attorney claimed the right to retain his fees out of this money, and the plaintiff, accordingly, petitioned the court in which the suit was pending for an order requiring the attorney to pay over the money. The court held that a case was presented for the summary jurisdiction of the court and that it had discretionary power to order the money paid into its registry by a day named. Jones on Liens, Sec. 150.

In *Re* Executors of Aitkin, deceased, 4 Barn. & Ald. 47, 49, Abbott, C. J., said: "The question in the case is whether the court will compel an attorney to do that which in justice he ought to do,"—after stating that the question was one which related to the professional services of an attorney (if not he would not come under the rule). The court held, that "when the employment was so connected with his professional character as to afford the presumption that his character formed the ground of his employment by the client, then the court will exercise this jurisdiction." And in the case where the attorney was compelled to turn over the deeds placed in his hands for the purpose of making a conveyance, the court said: "For as much as a conveyance requires knowledge of the law the trust is reposed by the client in the party in respect of his being an attorney." It was a proper ground for summary relief. 3 T. R. 275, 1 Strau. 621. And in this country it was held, in Grant's Case, 8 Abb. Prac. 357, that where an attorney had received money for investment in a certain way that he was employed because of his character as an attorney and was liable to be summarily required on motion to repay it, if he applied it other than in the way required by the client. If fraud be shown on the part of an attorney who has received money or papers into his hands from a client on account of his professional character the reason for the rule is much stronger. 1 N. & M. 555; *Ex parte* Cripwell, 5 Dowlings Rep. 689. Coleridge, J., said, that the case of *In re* Aitkin, *supra*, has been the authority for many decisions. And an attorney was held liable to pay over money obtained on title deeds left in his hands by summary process because of his character as an attorney and officer of the court.

In the case of Charbaneau v. Orton, 43 Wis. 96, it was held that a summary proceeding would lie to compel an attorney to pay over such a sum in the hands of an attorney over and above the amount of the reasonable charge for services. To the same effect was the case of Conyers v. Gray, 67 Ga. 39. But it is held that if the client proceed by regular suit he waives the right to the summary proceeding. Cottrell v. Finlayson, 4 How. Pr. 242.

"If the client is dissatisfied with the sum retained," says Chief Justice Black, "he may either bring suit against the attorney or take a rule upon him. In the latter case the court will compel immediate justice or inflict summary punishment upon the attorney, if the sum retained is such as to show a fraudulent intent. But if the answer to the rule convinces the court that it was held back in good faith, and believed not to be more than an honest compensation, the rule will be dismissed and the client remitted to a jury trial." Balsbaugh v. Frazer, 19 Pa. St. 95.

This is the definitely settled common law of both this country and England, and may be put into practice in any state of the Union unless strictly prohibited by statute. We call attention to this practice because of so many instances occurring where attorneys refuse to deliver up papers of value unless paid unconscionable fees, and as this process brings up the matter without delay, often becomes of the greatest value.

NOTES OF IMPORTANT DECISIONS.

INJURY TO A PASSENGER FROM ACCIDENTAL DISCHARGE OF PISTOL IN HANDS OF THIRD PARTY. — The case of Nashville, C. & St. L. Ry. Co. v. Flake, 88 S. W. Rep. 326, presents a somewhat novel situation. The facts are as follows:

A boy 13 years of age, while riding on one of the passenger trains of the plaintiff in error on the afternoon of the 24th of December, 1903, while en route from Huron, a small station on the line of the railway, to Lexington, in this state, was shot. He was wounded by a pistol fired by a party whose name was unknown, and this suit was brought to recover damages for the injury thus received, upon the theory that the conditions existing upon that train, which either were known or should have been known to those in charge, were such as to have caused them reasonably to anticipate this result, and failing to exercise proper diligence, the plaintiff in error was liable. There was a verdict and judgment in favor of the plaintiff, and the case has been brought into this court for review. A number of errors have been assigned, all of which save one are disposed of in memorandum opinion which is not intended for publication. The one not there embraced is regarded as of sufficient importance for an opinion to be carried into our Reports.

The record shows that at Jackson, Tenn., the train in question was boarded by a number of persons then under the influence of strong drink. These parties carried upon the cars bottles of liquor, from which they freely drank as the train proceeded. They were boisterous in manner and speech, and by their conduct attracted the attention and gave considerable alarm to other passengers. They had possession of dynamite sticks, on which they placed caps. These, on being struck upon the floor, exploded. These explosions were as loud as pistol shots. While one or more of these explosions took place in the coach in which the defendant in error was riding, the others were produced upon the platform outside. Young Flake entered the coach, in which he was sitting at the time he received his wound, at Huron. He took his seat just back of the water cooler, with his face fronting in the direction the train was moving. This coach was immediately in the rear of the smoking car. In it were crowded many passengers filling all the seats and occupying the aisle. The parties who have been referred to as boisterous, or at least some of them, came occasionally into this coach, elbowing their way down the aisle, and, after remaining for a few minutes, would retrace their steps, and on passing out they either stopped upon the platform or else would enter the smoking car. The passengers in this coach observed that they were under the influence of liquor. Loud and boisterous talking in the smoking car was heard. Much firing was done on the platform between the coach and the smoking car. This firing began soon after the train left Jackson, and continued at intervals until this boy was shot. Unquestionably, some of the explosions which occurred on this platform came from the use of dynamite sticks, but some were from the use of pistols in the hands of some of these parties. One of them made an effort to have a witness, whose testimony is in the record, shoot a negro, who, at one of the stations along the line of the road, rode for a short distance upon the steps of this smoking car while engaged talking to a friend on the platform, offering him a pistol for that purpose. The witness, however, declined the offer. Immediately after the firing of the shot that wounded young Flake, one of these rowdies, with a pistol in his hand, went out of the coach to the platform, and stated that his weapon had accidentally been discharged, and he had wounded a boy.

The employees in charge of the train testify that they saw no one with pistols, and heard no firing. They say that there were crowds collected at the

stations along the railroad, consisting of whites and negroes, engaged in shooting firecrackers and otherwise making a noise as such crowds will do in anticipation of Christmas. They further testify that there was some boisterous conduct in the smoker, which, however, was promptly suppressed by the manager of trains, who happened to be on board at that time. They deny that they knew, save for the single incident just referred to, of any improper conduct committed by any one, either on the platform or in the coaches making up that train. The jury evidently credited those witnesses who testified so positively with regard to the shooting of pistols and other explosives on the platform, as well as to the boisterous conduct in the coach, and believed, where so many persons were aware of these things, that the railroad employees either knew, or by the slightest diligence might have been informed, of them. That the jury imputed the wound of this boy to the failure of those in control of the train to discharge their duty is evident from the verdict which was rendered. While it is true they could not foresee the wounding of the defendant in error, yet they should have anticipated that drunken ruffians armed with pistols, unless suppressed, would either accidentally or intentionally inflict injury upon their fellow passengers.

We think there is abundant evidence to support the verdict of the jury, and to indicate that they were inexcusably negligent in preserving order. The principle of law controlling in the case is that "wherever a carrier, through its agents or servants, knows, or has opportunity to know, of threatened injury, or might have reasonably anticipated the happening of an injury, and fails or neglects to take proper precaution, or to use proper means, to prevent or mitigate such injury, the carrier is liable."

The above is the general rule, and may also be found well supported by the following cases: Murphy v. Western & A. R. R., 23 Fed. Rep. 637; Batton v. South, etc., Alabama Ry. Co., 77 Ala. 591, 54 Am. Rep. 80; Flamney v. Baltimore R. Co., 4 Mackay, 111; Richmond, etc., R. Co. v. Jefferson, 89 Ga. 554, 32 Am. St. Rep. 87; Chicago, etc., R. v. Pillsbury, 123 Ill. 91, 5 Am. St. Rep. 483, 31 Am. & Eng. R. R. Cases, 24; Springfield Consolidated R. v. Flynn, 55 Ill. App. 600; Evansville Ry. Co. v. Darling, 6 Ind. App. 375; Felton v. Chicago, etc., R. Co., 69 Iowa, 577, 27 Am. & Eng. R. Cas. 229; Kinney v. Louisville, etc., Ry. Co., 34 S. W. Rep. 1066; Pittsburg, etc., R. Co. v. Hinds, 53 Pa. St. 512, 91 Am. Dec. 224. The question is not so much that the passenger was injured as that the injury was the result of the failure of the officials to afford protection. N. O. R. Co. v. Burk, 53 Miss. 200; Royston v. Ill. Cen. R. R., 67 Miss. 376.

There is no such privity between disorderly passengers and the carrier as to make them liable on the principle of *respondeat superior*. The only ground upon which the company may be charged is upon its contract to carry the passenger safely, and if they so negligently performed their contract as to result in an injury to the passenger the company is liable. Pittsburg, etc., R. Co. v. Hinds, 54 Pa. St. 512, 91 Am. Dec. 224, 5 Am. & English Ency. Law, 553.

While not directly to a passenger for a wrong inflicted by an intruder or stranger or fellow passenger, they are responsible for such injury if it appear that the companies knew or ought to have known, that danger existed, or was reasonably to be apprehended and that they could by use of the agencies at their disposal have prevented the mischief. Connell v. Chesapeake, etc., Ry. Co., 93 Va. 44.

It must be shown that the conductor knew of the threatened injury or from the character and number of persons on board and the surrounding circumstances might reasonably have anticipated the injury. Spohn v. Missouri Pac. Ry. Co., 87 Mo. 74, 101 Mo. 417. The degree of care required of the carrier is the highest and utmost vigilance. Wright v. Chicago, etc., R. Co., 4 Col. App. 102; Putman v. Broadway, etc., R. Co., 55 N. Y. 108, 14 Am. Rep. 190; Am. & Eng. Encyclopedia of Law 554, notes.

In case of insane persons as soon as the knowledge reaches the servants of company in charge of cars then the liability of company begins. Meyer v. St. Louis, etc., R. Co., 54 Fed. Rep. 116, 58 Am. & Eng. Ry. Cases, 111. So in case of assaults of passengers when by exercise of proper care might have been prevented. Hendricks v. Sixth Av. Ry. Co., 44 N. Y. Sup. Ct. 8; International Ry. Co. v. Miller, 9 Tex. Civ. App. 104.

THE GENERAL WORDS OF A RELEASE FROM INJURIES IN A RAILROAD ACCIDENT.—An interesting point was recently decided by the Supreme Court of the United States by a divided court, in the case of Tex. Pacific Ry. Co. v. Dashiell, 25 Sup. Ct. Rep. 737. This action was originally brought in the district court of Tarrant county, in the state of Texas, and removed by the railway company to the United States Circuit Court for the Northern District of Texas, on the ground that the railway company is a corporation under the law of the United States. The trial resulted in a verdict for the defendant in error for the sum of $7,500, upon which judgment was entered. It was affirmed by the circuit court of appeals.

The action was for personal injuries sustained by defendant in error through the negligence of the railway company. The defendant in error was a conductor on one of the company's freight trains, with which another train collided, "whereby," it is alleged, "plaintiff was seriously, painfully, and permanently injured in many parts of his body, and especially was he so injured in and about the head, eyes, back, sides, arms, and shoulders, and in the organs and functions of his brain, and in his entire mental and nervous system, and that, as a result of said injuries, plaintiff has, since the reception thereof, now is, and in the future will permanently be, helpless, in-

jured, and unsound of mind and body, and wholly incapable of transacting any kind of business or of doing any kind of mental or manual work, and that he now is and for the remainder of his life will be cared for and protected, if at all, by his friends and relatives."

And it is also alleged: "That as a result of said negligence and collision plaintiff further says he was badly burned about the legs, sides, back, arms, hands and head, and that his left eye has become seriously affected by reason of said injury thereto, and by reason of said injury to his head and nervous system affecting said eye, in so much that the value, use, and sight of said eye is now greatly impaired and almost entirely lost, and that the sight of his right eye is also now considerably weakened and impaired by reason of its sympathy for his said left eye. That as a result of said negligence and injury plaintiff now suffers, has suffered, and for all his life will continue to suffer, great physical pain and much mental anguish and pain."

Among other defenses plaintiff in error pleaded a release executed by defendant in error on the 2nd day of February, 1901, which is as follows:

"Whereas, on and prior to the 24th day of December, 1900, I, G. H. Dashiell, was employed by the Texas & Pacific Railway Co. as brakeman and extra freight conductor at or near Eastland, Texas, on the said 24th day of December, 1900, about 3:15 o'clock a. m. I sustained certain personal injuries in the manner and of the character described, to the best of my knowledge and ability, to-wit: "Extra east eng. 189 struck caboose of extra east eng. 255, 2 1-2 miles east of Eastland, bruising my body, right leg, right arm, and giving me a scalp wound.

"And, whereas, it is by said railway company and myself mutually desirable to maintain amicable and pleasant relations and avoid all controversy in respect to said matter:

"Now, therefore, to that end, and in consideration of $30.00, to me now here paid in cash by said Texas & Pacific Railway Company, I hereby release and acquit, and by these presents bind myself to indemnify and forever hold harmless, said Texas & Pacific Railway Company from and against all claims, demands, damages, and liabilities, of any and every kind or character whatsoever, for or on account of the injuries and damages sustained by me in the manner or upon the occasion aforesaid, and arising or accruing, or hereafter arising or accruing, in any way therefrom.

"It is expressly understood that, although we remain as free to contract with each other as if this transaction had not occurred, the Texas & Pacific Railway Company has not and does not agree to bind itself to employ me at or for any time, or in any capacity whatsoever.

"And it is also expressly understood, that all premises and agreements respecting or in any wise relating to the subject hereof are fully expressed herein and no others are made or exist."

The plaintiff in error further pleaded that defendant in error remained in its service and employment for about three months, and did at said time and at all times thereafter ratify and approve the release and all of its terms and provisions.

To that part of the answer which pleaded the release, defendant in error demurred, and also answered, alleging that (1) at the time of its execution and ratification, if it was ratified, he he was of unsound mind; (2) He and plaintiff in error were mistaken as to the extent of his injuries, and did not contemplate the result set out in his petition; (3) The release was without consideration.

These defenses to the release were disposed of by the court as follows: "On the question of the release of the defendant from liability for the injury sustained by plaintiff, you are charged that the agreement entered into between the plaintiff and the defendant company, which has been introduced in evidence, is a release of the defendant from liability for the particular injuries which are enumerated in the face thereof, to-wit: injuries to his body, right leg, right arm, and a scalp wound. The court does not, however, construe it to be a release for the injuries alleged to have been received by him resulting in the impaired mental powers, and in the partial loss of sight in his left eye. These injuries are those for which damages are sought in this action, and the consideration of which will be submitted to you in this charge."

This interpretation of the release was affirmed by the court of appeals, and presents the only question in the case.

Plaintiff in error contends that the release was intended "to be a final settlement of all claims growing out of the accident." The defendant in error contends that it was a settlement only of the particular injuries enumerated.

The court says "in the case at bar, however, mistake is charged, and there is evidence to show that defendant-in-error's skull was fractured and it was from that impairment of his sight and mental powers resulted. Such effects, the testimony tended to show, could not have resulted from a simple wound to the scalp. There was testimony going to show, therefore, that the injuries to defendant-in-error's skull, brain and eye were not known to the parties when the release was executed, and that his impaired mental powers and loss of sight were the results of those injuries and not the result of those enumerated." It seems as though such good moral sense would have had no dissenting opinion yet Mr. Justices Brewer, Brown and Peckham all dissent. Quebe v. Gulf, C. & S. Ry., 97 Texas, 66 L. R. A. 734, 81 S. W. Rep. 20, is distinguished notwithstanding some of its expressions.

In that case the consideration was $100. The question was left to the jury as to whether or not the injuries sued for were confined to the terms of the release. Quebe contended that the release

was so confined as a matter of law. The supreme court, replying to it, said that the intention was "to release the cause of action rather than to acknowledge receipt of payment for a part of the damage." The court admitted the existence of the rule of construction relied on, and that it was supported by many authorities, but used language which seemed to confine it to cases where the release is attacked on the ground of mistake or fraud, and not to apply it when the interpretation or construction of language of a release is under consideration. This is certainly a doubtful limitation of the rule.

The decision in this case seems to us to be based upon proper considerations which are stated, but probably upon others too, which do not appear in the opinion. The specification of the injuries in the release shows conclusively that the injuries for which the suit was brought to recover had not entered into the consideration of the parties at the time it was drawn otherwise they would have appeared in the release. As a matter of fact it does not appear to us right that one who has been seriously injured and from whom the railroad company has procured a release before there has been time to know how serious the injury would prove to be, to allow such a contract to stand upon a nominal sum of money paid as a settlement.

There is much said about ambulance chasers. Yet we do not hear so much about claim agents whose business it is to proceed at once and make best possible terms with injured persons before anything developes which would prevent a good settlement and release from claims. If a party settles for a nominal sum it is clear that he had no notion in his mind that the injuries received amounted to much. The claim agent gets in his work a release is signed before the injured party knows its significance or is in such a mental condition from the suffering caused by the injuries that he is not responsible for his act. See Union Pac. R. Co. v. Artist, 23 L. R. A. 581, 60 Fed. Rep. 365, 9 C. C. A. 14, 19 U. S. App. 612; Jackson v. Stackhouse, 1 Cow. 122, 43 U. S. App. 476, 13 Am. Dec. 514.

General Rules Tyron v. Hart, 2 Couse. 120; Appeal of Matlock, 7 Watts & S. 79; American Granite Co. v. United States, 20 Ct. Cl. 1; Cum v. Sawyer, 130 Ill. 443, 24 N. E. Rep. 377.

UNLAWFUL DETAINER—NOTICE.—The Supreme Court of Alabama, in the recent case of Barnewell v. Stephens, 38 So. Rep. 662, was called upon to decide in an action of unlawful detainer where the notice to the tenant to surrender possession had been given by the plaintiff's attorney, acting for and in the name of the plaintiff, whether it was necessary to prove that the attorney had authority to make the demand or whether such authority would be presumed from the appearance by the attorney in the case, his authority to appear not being questioned. The court, by Anderson, J., said:

"The statute requires that a written demand be made after the termination of the possessory interest by any one lawfully entitled thereto, his agent or attorney. The demand in this case was made by Ervin and Sims as attorneys for plaintiff, and there is no question but what the statute gives the agent or attorney the right to make the demand, but the evidence should show that the party who makes the demand was in fact the agent or attorney when the written demand was made. Nor does the subsequent bringing of the suit by them as attorneys create the presumption that they were such when the demand was made, and dispense with the necessity on the part of the plaintiff of proving that they were his attorneys when they made the written demand. Jesse French Piano Co. v. Johnston (Ala.), 37 So. Rep. 924; Strauss v. Schwab, 104 Ala. 669, 16 So. Rep. 692; Butler v. Jones, 80 Ala. 436, 2 So. Rep. 300; Bolling v. Kirby, 24 Am. St. Rep. 789, and note; Moore v. Refrigerator Co., 128 Ala. 621, 29 So. Rep. 447; Kennedy v. Hitchcock, 4 Port. 230; 2 Greenleaf on Evidence, 644.

It is always presumed that an attorney appearing and acting for a party to a cause has authority to do so, and to do all other acts necessary or incidental to the proper conduct of the case, and the burden of proof rests on the party denying such authority to sustain his denial by a clear preponderance of the evidence. 3 Am. and Eng. Ency. Law, p. 375. The presumption of employment or authority, however, is not indulged in by the courts anterior or incidental to the accrual of the cause of action. It was said in the case of Brahn v. Jersey City Forge Co., 38 N. J. Law, 76: 'The demand of possession was in writing, signed, "The Jersey City Forge Company, by B. Buchanan Yale, President," and service thereof was acknowledged by Brahn in writing. The sufficiency of this demand is denied on the ground that it does not appear affirmatively that it was a demand by the landlord or his lawfully authorized agent. The act authorizing this summary proceeding preserves the rule of the common law that the notice to quit must be given by the landlord personally, or by his duly appointed agent. If by the agent, it must appear that he is clothed with power to give the notice at the time it was given. Ordinarily a subsequent ratification of an agent's act by the principal will be sufficient, but between landlord and tenant the rule with regard to the notice differs from that which governs between principal and agent as to other transactions. A subsequent assent on the part of the landlord will not establish by relation a notice given in the first instance without his authority. The reason is that the tenant must act upon the notice at the time it was given, and it must therefore at that time be such a notice as he can act upon with security; and, if authority by relation were sufficient, the tenant would be subject to the injustice of being left in doubt as to his action until the ratification or disavowal of the principal. * * * The mere fact, there-

fore, that the company adopted the act of its agent by instituting these proceedings, based upon the legality of the demand for possession, is not of itself sufficient to justify the implication that the agent had the requisite authority at the time he served the notice.'

Judge Story, in his work on Agency, par. 246, says that if the act done by the agent would, if authorized, create a right to have some act or duty performed by a third person, so as to subject him to damages or losses for the non-performance of that act or duty, or would defeat a right or estate already vested in the latter, there the subsequent ratification or adoption of the unauthorized act by the principal will not give validity to it, so as to bind such third person to its consequences; and within this rule he instances the case of a notice to quit given by an unauthorized person for the landlord, subsequently ratified by the latter. 'A well-recognized illustration of this rule exists also in the case of landlord and tenant. Thus a subsequent assent on the part of the landlord will not establish by relation an unauthorized notice to quit given by his agent. The tenant must act upon the notice at the time it is given, and the notice must therefore at that time be such as he can act upon with security; otherwise the tenant would be subjected to the injustice of being left in doubt as to his action until the ratification or disavowel of the principal.' Mechem on Agency, par. 179."

MENTAL ANGUISH AS AN ELEMENT OF DAMAGE.

It is a maxim and a theory of the law that for every wrong inflicted there is provided a remedy. But that is not the fact. There are certain injuries concerning which no compensation is afforded, although the suffering endured may result in humiliation, anguish and mental distress. Whether one who sustains an injury by the negligent act of another may recover for the effects upon the mind, where such injury is not associated with bodily harm, is becoming a question of growing interest and importance. When first it became necessary for the courts to consider this proposition, the rule established was uniform that no action would lie to recover damages for an act of negligence, where the mind alone was affected. And while the very great weight of authority still affirms this rule, there is to be noticed a vigorous dissent.

It is certainly a wise and just provision of the law, that there may be some compensation for mental disturbance, which follows as a consequence of injuries to the person. There is barely a case of physical injury where the sufferings of the body and mind are not reciprocal. The wounds of the body resulting in great pain and agony may have a direct and potent effect on the operations of the brain, and conversely a diseased mind may seriously affect the physical constitution. The real suffering caused by mortification of the feelings, shame and fright, is often much more grievous to bear than pain endured from lacerations of the body. The dismay and consequent shock produced by the danger attending a personal injury not only aggravate it, but frequently are so appalling that the reason is superseded and the person is disabled from warding off the danger. To say that mental anguish does not enter into the charac er and extent of the actual injury and form a distinctive part of it would be an affront to good sense.[1]

But the compensation for pain and suffering must not be construed as the price or value. It is recognized as a deserved allowance toward recompense for or because of the sufferings induced or contributed to by the injury.[2] The Supreme Court of the United States has given added weight of authority to the prevailing rule in two interesting cases. When it was sought to recover damages for careless and negligent shooting and wounding, the jury were instructed by the trial justice in Utah, that in the computation of damages they might take into consideration a fair compensation for the physical and mental sufferings caused by the injury. On appeal on the part of the appellant, it was argued, that the action being for a negligent injury and not for a willful and malicious one, the instruction was erroneous, because the words "and mental" were included. But the Supreme Court of Utah held a contrary opinion.[3] The judgment of the appellate court was affirmed by the Supreme Court of the United States in an opinion by Mr. Chief Justice Waite. "We think," say the court, "that the effect of this instruction was no more than to allow the jury to give compensation for the personal sufferings of the plaintiff caused by the injury and that in

[1] Seger v. Barkhamstel, 22 Conn. 290.
[2] Morgan v. So. Pac. R. Co., 75 Cal. 501.
[3] Giblin v. McIntyre, 2 Utah, 384.

this there was no error."[4] This decision was approved and followed in a subsequent case which came before the supreme court for review from Montana. The plaintiff had been injured, as was alleged and proved, by reason of the defendant's negligence in failing to provide safe and well-broken horses, and also a safe and competent person to drive, on account of which negligence the horses became unmanageable, and in jumping from the coach plaintiff's leg was broken. The trial court permitted the jury to assess damages from mental suffering such as the proof showed necessarily followed the injury. In reviewing the action of the trial court, Mr. Justice Gray says: "The instructions given only authorized them (the jury) in assessing damages for the injury caused by the defendant to the plaintiff, to take into consideration his bodily and mental pain and suffering, both taken together ('but not his mental pain alone') and such as inevitably and necessarily resulted from the original injury. The action is for an injury to the person of an intelligent being, and when the injury, whether caused by willfulness or negligence, produces mental as well as bodily anguish and suffering, independent of any extraneous consideration or cause, it is impossible to exclude the mental suffering in estimating the extent of the personal injury for which compensation is to be awarded."[5]

In prescribing the general rule the American courts have followed quite closely the English decisions. Thus Lord Coleridge declared that when an action is brought for a personal wrong the jury in assessing the damages can with little difficulty award him a *solatium* for his mental suffering alone with indemnity for his pecuniary loss.[6] Similarly the Privy Council has decided an interesting case from the Supreme Court of Victoria. While crossing a railroad track in a wagon, a woman narrowly escaped being struck by a train, owing to the negligence of a gatekeeper. A severe nervous shock followed the fright, and subsequently severe illness resulted. The court on appeal sustained the contention of the defendant that the damages were too remote. In the opinion of the court, Sir Richard Couch says: "Damages arising from mere sudden terror unaccompanied by any actual physical injuries, but occasioning a nervous or mental shock, cannot under such circumstances, their lordships think, be considered a consequence which in the ordinary course of things would flow from the negligence of the gatekeeper."[7]

The question of fright as an independent element of damage came up directly in a recent case in New York. The plaintiff, a woman, was standing on the street awaiting an opportunity to board a car. When about to board the car, a horse car belonging to the defendant came down the street. As the horses attached to the latter car approached they suddenly turned toward the right, coming so close to the plaintiff, that when the horses were stopped plaintiff was standing between their heads. There was little question that the shock and nervous excitement were extreme. Plaintiff soon became unconscious, and afterwards suffered a miscarriage and serious illness. It was proved by medical testimony that the disability sustained was sufficient to produce the injuries alleged. The court on appeal affirmed the trial term, and laid down the rule as authoritative that there could be no recovery for mere fright.[8] The general rule has been followed in a large majority of the states.[9]

In some instances the issue presented has been raised under rather extreme conditions. On appeal to the English House of Lords from the Irish Court of Exchequer Chamber, Lord Coleridge giving the opinion, it was decided that there could be no recovery for the mental sufferings experienced by a husband where the chastity of a wife had been impugned. The husband, joining the wife, sued in his own right. The slanderous words were not actionable *per se*. It appeared, however, in consequence of the reports made by the defendant that the wife had been sent away to her father's home. The trial jury thought that the husband's feelings had been damaged to the extent of £150. But as there was no allegation or proof of special damage,

[4] McIntyre v. Giblin, 100 U. S. 125.
[5] Kennon v. Gilmer, 131 U. S. 30, 29 Cent. L. J. 262.
[6] Blake v. Midland R. Co., 18 S. B. 93.
[7] Victoria Railway Co. v. Coultas, L. R. 13 App. Cas. 222.
[8] Mitchell v. Rochester R. Co., 151 N. Y. 107.
[9] Joch v. Daukward, 85 Ill. 331; Canning v. Inhab. of Williamstown, 1 Cush. 451; Western Union Tel. Co. v. Wood, 57 Fed. Rep. 471; Renner v. Canfield, 36 Minn. 90; Johnson v. Wells Fargo & Co., 6 Nev. 224; Wyman v. Leavitt, 71 Me. 227.

the judgment was reversed.[10] Likewise in Michigan, a husband sought in vain legal redress for mental anguish occasioned by an alleged act of malpractice, which, after causing great suffering, terminated in the wife's death. The court of appeals expresses approval of the "propriety and good sense of the rule, which restricts the right of mental suffering to the person who receives the injury."[11] Another phase of the question appeared in a Massachusetts case. A township was made defendant in an action brought to recover damages for injuries sustained by the plaintiff on account of a defective bridge. The plaintiff received no bodily injury but was severely frightened, and apprehended that physical harm was about to ensue. There could be no relief because plaintiff incurred simply the risk and peril, which caused fright and mental suffering.[12]

It is further to be observed that although a physical injury is a necessary pre-requisite for the consideration of mental anguish as an element of damage, still the courts have grown most liberal in their opinions as to what constitutes a bodily injury. For instance, in Wisconsin, a female passenger in a railway train was subjected to indignities and embarassment by the conductor of the train hugging and kissing her. For this personal affront and the deep shame and mortification suffered, accompanied by whatever physical injury there was in the conductor's embrace, a recovery was sustained.[13] Yet although the physical injury in some cases may be so slight that as to seem merely an assumption, the person injured must possess enough capacity to appreciate the mental agony endured. Hence where an employee was killed by the result of a fall, owing to a defective floor, there could be no damages awarded for mental suffering, for the reason that the deceased was unconscious from the time of the fall until the time of his death. There was no method by which the mental consideration could be ascertained or proved.[14]

The right to recover for mental injury apart from impact with the body, is very fully and ably considered in a Missouri case, where there are reviewed and considered a large number of authorities from various jurisdictions.[15] The action was instituted against a telegraph company to recover damages for mental distress resulting from the failure of the company to deliver to the father a telegram from his wife, announcing the dangerous illness of his child. By reason of the delay in transmission, the father was prevented from reaching his home in time to attend the child's funeral. As the injury was accompanied by no bodily harm, it was held that there could be no relief afforded.

The reason for the limitation of the general rule is based upon the broad grounds of public policy and to prevent the opportunities for fraud in cases where the sentiments and feelings alone might be advanced as the only basis of damage. A vast flood of litigation would result were the rule extended. Injuries might be easily feigned, without detection, and damages would rest entirely upon speculation and conjecture.[16] The prevailing rule is however limited to cases where the fright is caused simply by the negligence of another, and is not extended to meet those cases where there is an intention to cause mental distress or to hurt the feelings, such as slander, seduction, malicious prosecution or arrest. Neither has the rule application in cases arising from gross negligence or recklessness, where there is utter indifference to the consequences which must have been in the actor's mind.[17] Yet while the general rule is decisively established by the great weight of authority, it is by no means unchallenged. There was an express disaffirmance of the rule in an Irish case, where damages were claimed for great nervous shock sustained by the plaintiff in anticipation of a collision on the railroad. Ill health followed the excitement, but there was no impact with the body and the ill health was predicated alone upon the nervous strain. The court of last resort allowed a recovery, since the fright experienced was a direct consequence of the occurrence and the plaintiff's ill health the consequence of the fright.[18]

[10] Lynch v. Knight, 9 H. of L. Cas. 598.
[11] Hyatt v. Adams, 16 Mich. 180.
[12] Canning v. Williamson, 1 Cush. 451.
[13] Cracker v. Railway Co., 36 Wis. 657.
[14] Kennedy v. Standard Sug. Co., 125 Mass. 90.
[15] Connell v. Western Union Tel. Co., 37 Cent. L. J. 51.
[16] Mitchell v. Rochester Co., 151 N. Y. 107.
[17] Spade v. Lynn R. Co., 168 Mass. 285; Lombard v. Lenox, 155 Mass. 70; Meagher v. Driscoll, 99 Mass. 281.
[18] Bell v. Great North. R. Co., 26 Ire. 428.

The same view has been entertained in Texas. Plaintiff sought to be recompensed by reason of defendant's breach of contract to deliver promptly the body of plaintiff's husband. The agreement provided that the body should be carried from San Antonio to Jefferson. When the train by which transportation was to be made reached the latter place, the body was not on board. A large number of friends of the deceased had gathered at the station to accompany the body to plaintiff's home, which caused great distress of mind to plaintiff. After considrable delay the body was delivered at the destination, but plaintiff's anxiety was further increased by the fact that the body was in a state of great decomposition. There was a demurrer to the cause of action in the trial court, which was allowed. The appellate court reversed the judgment and held that the facts alleged were sufficient to constitute a good case of action.[19]

In a cause in Indiana, the plaintiff claimed to have suffered much agony of mind because a telegraph company had failed to deliver to him promptly a message, by reason of which negligence he was unable to reach his mother's bedside before her death. The facts presented were analogous to those appearing in Connell v. West. U. Tel. Co., *supra*, but the courts reached conclusions diametrically opposed to each other. The expression of dissent from the general rule was again emphasized by the Court of Civil Appeals of Texas in a comparatively recent decision.[20]

It remains to be mentioned that the measure of damages in these cases is not limited alone to the mental suffering, following as a result of physical injuries, but may also include that condition of mind induced by wounded sensibilities and by indignities, humiliations and insults suffered.[21]

GEORGE LAWYER.

Albany, N. Y.

[19] Hale v. Bonner, 82 Tex. 33.

[20] Wormack v. Western Union Tel. Co., 22 S. W. Rep. 417.

[21] Smith v. Holcomb, 99 Mass. 552; Wyman v. Leavitt, 36 Am. Rep. 303.

STREET RAILROAD—INJURY TO CHILD ON TRACK.

SOUTHWEST MISSOURI ELECTRIC RY. CO. v FRY.

Supreme Court of Kansas, July 7, 1905.

A petition in an action by the parents to recover damages for the death of a minor child, caused by being run over by a street car, which avers that the child came to his death by the employees of the defendant "carelessly, negligently, recklessly, and wantonly running said car upon and over" the body of the child, instantly killing him, is sufficient in its allegations to sustain a verdict for damages, notwithstanding a special finding that the injury was not inflicted through the "reckless and wanton neglect of the defendant's employees in charge of the car."

GREENE, J.: The plaintiffs, as the parents of their minor child, Earnest Fry, brought this action against the Southwest Missouri Electric Railway Company to recover damages for the death of said child, alleged to have been occasioned by the negligence of the defendant's employees in carelessly and negligently running one of its street cars over said child, causing its death. The plaintiffs recovered judgment, from which the defendant prosecutes error.

The defendants in error call our attention to the fact that the record does not disclose that all the evidence which was introduced upon the trial is preserved, and therefore they object to this court considering any of the alleged errors involving an examination of the evidence. The record itself contains no statement that all the evidence is preserved. The certificate of the trial judge, however, states that all the evidence is contained in the case-made. The trial judge cannot make or supplement a case-made by his certificate. The only authority given him by statute is to certify that the case-made is a true case-made; and, if the case-made does not show that it contains all the evidence, the certificate of the trial judge is ineffectual to supplement it. Bartlett v. Feeney, 11 Kan. 594, 602; Brown v. Johnson, 14 Kan. 377; Eddy v. Weaver, 37 Kan. 540, 15 Pac. Rep. 492. The omission of the evidence from the record deprives this court of authority to examine any error involving a consideration of the evidence.

The only remaining contention arises on the insufficiency of the petition to authorize the court, in view of the special findings of the jury, to enter judgment for the plaintiffs. It is argued that the petition charges the defendant with having knowingly, willfully, and wantonly run over and killed the plaintiffs' child, while the jury found that the death was not caused by the knowing, willful, and wanton acts of the employees of the defendant. It is contended that under this finding judgment should have been rendered for the defendant. The averments of the petition are: "(6) Plaintiffs aver that on the 28th day of January, A. D. 1903, the minor son of plaintiffs, as aforesaid, was lawfully crossing over Seventh street, in the city of Galena, Kansas, at a

point on said street where Wood street, one of the streets of said city, intersects with said Seventh street, when one of defendant's street railway cars, to-wit, No. 34, that was being carelessly, negligently, recklessly, and wantonly run and operated along and over said Seventh street by defendant, struck and knocked the said Earnest Fry down, and defendant carelessly, negligently, recklessly, and wantonly ran said car upon and over the body of plaintiffs' minor son as aforesaid, instantly killing the said minor son of plaintiffs." The petition averred that the injury was the result of the negligence of the defendant in operating its cars. If defendant was in doubt as to whether it was an action to recover damages for the careless and negligent management of the cars by the defendant's employees, or a charge that the killing was wantonly and cruelly inflicted, it could have ascertained by a motion either to make the petition more definite and certain in this particular, or by a motion to strike out. The petition is sufficient to admit evidence that the injury was the result of the negligent conduct of defendant's employees, and the finding of the jury sustains that charge.

The judgment of the court below is affirmed. All the Justices concurring.

NOTE.—*The Legal Effect of the Use of the Terms Willful, Abandoned, Reckless and Wanton Neglect.*—In the above case the jury found for the plaintiff, because there was evidence of negligence on the part of the street car company in managing that car, but did not find that it amounted to reckless or wanton negligence. In other words, the jury found that there could be no recovery for any reckless or wanton neglect on the part of the defendant. Had the jury found that the death of the child was caused by the reckless or wanton neglect of the railroad company, it then should have added punitory damages, in addition to compensatory damages. The point is, that, with a petition stating that the injury was inflicted wantonly, willfully and recklessly, if the jury found that it was not done wantonly, willfully, recklessly and negligently, what right had the plaintiff to recover? All that was necessary to have stated was, that the injury was negligently committed. But the greater includes the less, so that, if the jury found that the plaintiff was entitled to verdict it could only have been on account of simple negligence, although the allegations included the words wanton and reckless negligence. If the charge is wanton and reckless negligence and the jury found that the defend nt was guilty of ordinary negligence the allegation would support a verdict. In the case of Heim v. McCaughan, 32 Miss. 17, the plaintiff, was allowed to show in aggravation of damages, that his physical condition unfitted him to bear the exposure to which he was subjected, in consequence of the carrier's neglect to stop a boat according to his advertisement and take him on board, and it was held that exemplary damages might be recovered if such conduct was willful and capricious. It has also been held that exemplary damages may be given, in cases where there was a willful, reckless or capricious neglect to stop a train at a station where it should have stopped, upon being signalled to do so, independently of the health of the person, who desired to be a passenger. Wilson v. New Orleans & N. R. R. Co., 63 Miss. 352; Ala., etc., R. Co. v. Sellers, 93 Ala. 9, 9 So. Rep. 375, 30 Am. St. Rep. 17; Thomas v. Southern R. Co., 122 N. Car. 1005, 30 S. E. Rep. 343. Compare Martin v. Columbia & G. R. Co., 32 S. Car. 592, 10 S. E. Rep. 960. And where there was such a neglect to stop a street car, the employee having insulted the person who desired the car stopped, on his thereafter becoming a passenger. Jackson Electric R. L. & P. Co. v. Lowry, 79 Miss. 431, 30 So. Rep. 634. See also secs. 950, 951, Sutherland on Damages, 3rd Ed., Vol. III. If in a case where the petitions charged wanton, willful and reckless negligence, the court should charge that the plaintiff could not recover in such suit unless the jury found the acts of the plaintiff to have been done wantonly, willfully and recklessly; there is no doubt but the court would be making a mistake, because wanton, willful and reckless, does not exclude the idea that the act may have, nevertheless, been negligently committed. The rule adopted by the New York courts is such as not to permit the recovery of exemplary damages against the master for the act of negligence of his servant, unless he has authorized his act, or ratified it while such servant was in his office. Cleghorn v. N. Y. C. & H. R. R. Co., 56 N. Y. 44; Hendricks v. Sixth Av. R. Co., 12 J. & S. 8; Murphy v. Cent. P. & R. Co., 16 *Id.* 96; Fisher v. M. E. & R., 34 Hun, 433. This is the same in the United States. Lake Shore & Mich. So. v. Prentice, 147 U. S. 101. In Colorado not allowed (Greely v. Yeager, 11 Colo. 345) unless proof of authority or valification. Same in Connecticut. Messenbasher v. Concordia Society. Not allowed in Indiana. Humphries v. Johnson, 20 Ind. 190. Not allowed in Nebraska. Boyer v. Barr, 8 Neb. 68. New Hampshire. Fay v. Parker, 53 N. H. 342. New Jersey same as New York. Frohman v. Consolidated T. Co., 63 N J. L. 391. Rhode Island same as New York. Higgin v. Providence, etc R. Co., 3 R. I. 88. All other states allow exemplary damages for the gross, wanton, malicious or willful negligence of servants of corporations. Just why corporations should not be held bound by the same rules as private parties does not seem clear, that is to say, those states which hold that, the act of the servant must, in some way, have been ratified by the corporation before the corporation may be held to respond in punitive damages, is not based on general principles, and is against the decided right of authority. If heavy punitive damages were given in those railroad accidents, which have been caused by the reckless negligence of servants, there would be greater care exercised in the selection of servants for those places where great care should be exercised to avoid accidents. The case of Goddard v. The Grand Trunk Railway Company of Canada, 57 Me. 202, 8 American Negligence Cases, 316, is the leading case on the question holding a corporation liable for the willful misconduct of its servants toward passengers and giving punitive damages in such cases. In 8 Am. Neg. Cas. 330, Judge Walton states the doctrine in vigorous language: "We have given to this objection much consideration, as it was our duty to do, for the presiding judge declined to instruct the jury that if the acts and words of the defendant's servants were not directly nor impliedly authorized nor ratified by the defendant, the plaintiff could not recover exemplary damages. We confess that it seems to us that there is no class of cases where such a rule is less applicable than to railroad corporations in their capacity of common carriers of passengers and it might as well not be applied to them at all as to limit its application to cases where the servant is

directly or impliedly commanded by the corporation to maltreat and insult a passenger, or to cases where such an act is directly or impliedly ratified, for no such cases will ever occur. A corporation is an imaginary being. It has no mind but the mind of its servants. It has no voice but the voice of its servants; and it has no hands with which to act but the hands of its servants. All its schemes of mischief as well as its schemes of public enterprise are conceived by human minds and executed with human hands; and these hands and minds are its servants hands and minds; all attempts, therefore, to distinguish between the guilt of the servant or the guilt of the corporation; or the malice of the servant or the malice of the corporation; or the punishment of the servant or the punishment of the corporation, is sheer nonsense and only tends to confuse the mind and confound the judgment. Neither guilt, malice nor suffering predicable for this ideal existence called a corporation, and yet under the cover of its name and authority there is in fact as much wickedness and as much that is deserving of punishment, as can be found anywhere else, and since these ideal existences can neither be whipped, hung, imprisoned or put in the stocks—since no corrective influence can be brought to bear upon them except that of pecuniary loss—it does seem to us that the doctrine of exemplary damages is more beneficial in its application to them than in its application to natural persons. If those who are in the habit of thinking it is a terrible hardship to punish an innocent corporation for the wickedness of its servants and agents, will reflect for a moment upon the absurdity of their own thoughts their anxiety will be cured. Careful engineers can be selected who will not run their trains into open draws, and careful baggagemen can be secured who will not handle and smash trunks and bandboxes as is now the universal custom, and conductors and brakemen can be had who will not assault and insult passengers, and if the courts will only let the verdicts of upright and intelligent juries alone and let the doctrine of exemplary damages have its legitimate influence we predict those great and growing evils will be very much lessened if not entirely cured. There is but one vulnerable point about these ideal existences called corporations, and that is the pocket of the monied power that lies concealed behind them, and if this is reached they will wince. When it is thoroughly understood that it is not profitable to employ careless and indifferent agents, or reckless and insolent servants, better men will take their places and not before." This opinion was written in 1869, but is as applicable now as then but, for some reason there has been a hesitancy on the part of courts to grant punitive damages in our own day and generation.

JETSAM AND FLOTSAM.

"YOU NEVER CAN TELL."

You never can tell anything about the limit of a lawyer's versatility nor where in the whole gamut of human possibility of achievement it will begin. All the muses seem to bend the ear to the lawyer, delighting to carry out his slightest wish. He is in this respect, indeed, the most fortunate of mortals. To sustain the truth of this broad assertion we are pleased to quote from a very interesting toast of Mr. William Rogers Clay delivered at the recent meeting of the Kentucky State Bar Association, at Covington. Mr. Clay said:

Mr. Toastmaster and Gentlemen—Up to within the past few weeks I have lived a quiet and retired life, and have "pursued the even tenor of my way," with no thought of electrifying the world with any iridescent poetical scintillations. Indeed, I did not even suspect that I possessed such remarkable talent. But "you never can tell." Even the best of us go wrong. So upon being notified that I was to respond to a toast upon this occasion, I found myself carried away by an irresistible impulse to burst into song. And I am, therefore, here to-night, in full plumage, ready to sing with the same fluttering eagerness that impels the thrush to hail the coming spring with his first mellifluous notes. In producing this masterpiece I have not been hampered by any regulations or traditions of the past. I have purposely ignored all such finite limitations as rules governing lambic tetrameters and trochaic trimeters. I have known no such things as couplets, triplets, alcaics, sapphics, or even hendecasyllabics. The only measure by which I have been guided, is that three feet make a yard, and seventeen hundred and sixty yards make a mile, and I wanted to write a poem seventy-nine or eighty miles in length. I have preferred not to be an imitator, and, therefore, did not open the pages of Aeschylus, Euripides or Homer, which I am accustomed to read with perfect ease, with the combined assistance of an ordo, a literal translation and a interlinear. Nor did I consult the works of Horace, Ovid or Virgil, which have afforded me such supreme delectation in days gone by. Nor did I peruse the poems of Shakespeare, Byron, Burns or Moore, or gather inspiration from Longfellow, Whittier or Holmes, or even from Col. John A. Joyce or Ella Wheeler Wilcox. In fact, I have been content to blaze a new pathway through the wilderness of song. With that end in view, I mounted old Pegasus with spurs on both feet, pressed them to his flanks, threw the bridle over his head, and told him to go some. The result is one of the most wonderful excrescences of poetical fervor and volcanic genius that ever flashed from the brain of man. Methinks I can see the commentators of a thousand years hence writing innumerable volumes to explain its hidden meaning, and no doubt some Donnelly will come forward with cipher and code, and prove beyond a doubt that no one of this age could have written such a poem except Judge Guffy.

With my preamble finished, I will now proceed to throw you into a state of bewildering ecstacy by letting fall upon your captive ears the soft cadences of my dulcet voice as I read in a bewitching manner the impassioned verses of my ravishing song, which I have concealed about my person:

"YOU NEVER CAN TELL."

If you have a subtle feeling for a maiden rich and sweet,
And lay your heart and fortune in a bundle at her feet,
And tell her that you love her in a way that doth amaze,
And think that you will win her with your fascinating ways,
You are sure to read some morning in a paper at the door
The news of her engagement to a man you think a bore;
So you never can tell; you never can tell.

When in your pretty bonnet like the rustle of a wing,
You hear the bee a-buzzin' just as sweet as anything,
And think you'll prove a winner in the face of every doubt,

As the friends you chose for judges will refuse to count you out,
You get the doleful message that, not being in the ring,
The judges, your devoted friends, have done that very thing;
So you never can tell; you never can tell.

When practice is a trifle dull, and purse not fat within,
And you hear a man approaching with those whiskers on his chin,
Who at once uncorks his charming mouth, and gently turns it loose,
And spoils your rug of velvet with a squirt of "backer" juice,
You feel your blood a-boilin' for you think of murder then,
And tell him you will win his case, for fear he'll squirt again;
But you never can tell; you never can tell.

When you contemplate the picture of your client on the stand,
A-fumbling at those whiskers with his big old horny hand,
And though he's cross-examined by a lawyer just immense,
Arouses all the jury with a feeling quite intense,
You are certain of a judgment for at least ten thousand beans,
The half of which you'll seize upon before it strikes his jeans;
But you never can tell; you never can tell.

When you close your peroration and the jury leaves in tears,
You feel as sure as ever you will have enough for years,
And with rare and fertile fancy build your castles in the air,
And dream of private "yach-its" and a horse or two to spare,
When lo! the door is opened and the jury marches in,
And the clerk he reads the verdict and the other fellow "win;"
So you never can tell; you never can tell.

Cheer up, you say, for we will go and try the court (of) appeals,
Where the judges all are honest and their heads not full of wheels;
So down you go to Frankfort as you do most every time,
With many "cases on-all-fours" and confidence sublime;
But when the news from Frankfort comes that you're no longer it,
You feel like falling on all fours, and braying just a bit,
So you never can tell; you never can tell.

But you console yourself that when this weary life is o'er,
You will gladly be an angel on that bright and shining shore.
A playin' on a golden harp, with Satan's imps defied,
And eatin' sweet ambrosia with some nectar on the side,
But the keeper at the gate may say, although it hurts him to,
"No bum attorneys enter here," and then—it's hell with you;
So you never can tell; you never can tell.

SENTIMENTAL DAMAGES.

An action recently tried in the city of London cour furnished an example of those breaches of contrac for which it is difficult to assess compensation in money, though they have undoubtedly been attended by annoyance and inconvenience. The action was against the well-known tourist agents, Messrs. Thomas Cook & Co. The plaintiff had bought from them a return ticket from London via the United States to Japan. Coupons were attached to the tickets, which were exchanged at the different termini for steamer or railway tickets. On the return journey, he handed all his baggage at San Franscisco to one of the defendants' servants, for them to place on board the steamer at New York in his own particular stateroom. He paid the defendants for that service, and they assured him on his arrival in New York some days later that his baggage was on board, and that it would be handed to him as soon as the steamer was under way. When the steamer started, he found that his baggage was not on board, and he had to cross th Atlantic with nothing but a tooth-brush and a sponge He could scarcely present himself at the dinner table, and had to borrow a collar of the purser. He recovered his baggage after his arrival in Liverpool, and the damages for which he brought his action were the price of clothes he had to buy in Liverpool. There could be no difficulty about this head of damages, but let us suppose that the plaintiff had found his luggage immediately on his arrival at Liverpool and that it had been unnecessary to buy clothing to replace that which had been mislaid. Could the annoyance which the plaintiff suffered during the voyage be the ground of a claim for substantial damages? Many persons who have left London by railway for a visit to friends during the Christmas holidays have found at the end of their journey that their luggage had not been placed in the van, and have, in consequence, been exposed to so much discomfort that it has seriously interfered with the pleasure of their visit. But could they claim substantial damages for the breach by the company of their contract? Could the discomfort be measured in money? We remember to have heard of a case where the wine for a splendid banquet in the country had been purchased in London and had been despatched by railway. But it did not arrive in time, and the depression of the guests can readily be imagined. But Englishmen who hold that alcohol in any form is a poison would say that, though there might be a breach of contract, there was no real damage, and in any case it is difficult to ascertain the principle on which damages could be assessed. Does the rule *de minimis non curat lex* apply to such cases? Are there to be no damages for mere vexation and disappointment? We cannot find that there is much authority on the subject. The reason may be that the claim would usually be a modest one, and would therefore not be investigated in the superior courts. And in many cases where the breach of contract could not be disputed the party in default might think it expedient, without admitting liability, to offer same solatium for the annoyance which had been sustained. — *Solicitor's Law Journal.*

BOOK REVIEWS.

BURDICK'S LAW OF TORTS.

We have before us a most interesting work on the Law of Torts, by Francis M. Burdick, Dwight Pro-

fessor of Law in Columbia University School of Law. When we first took up this work, we looked for something particularly adapted to use in the school room, but upon a deeper perusal we found it the clearest exposition of the law of torts we have ever read. The historical sketch is interesting and instructive, and prepares one for what follows, and the reader irresistibly follows on, charmed with the diction and logic of the arrangement and classification of the subject-matter of this master of his subject. It affords a new light upon the subject, which is maintained through the whole work. He has, as he says, produced a new order, in which the "particular torts are dealt with different from that observed by many modern writers. It is not made to depend upon the motive, intent, or state of the mind of the wrong-doer, but upon the sort of harm inflicted. Those torts which are directed principally against the person of the victim are first considered; then those which are aimed at his property; and lastly, those which are clear invasions of the personal and property rights of another. A considerable saving of space has been secured by frequent cross-references. For example, chapter III, entitled Harms that are not Torts, contains a statement of principles which excuse or justify acts which are apparently tortious. These principles are not repeated in chapters devoted to particular torts, such as assault and battery, trespass and others, but are referred to in frequent foot-notes. Still, the moderate dimensions of this book are due, not so much to the space-saving device just mentioned, as to the deliberate purpose of the writer to prepare a hand-book; not a series of monograms, nor a collection of commentaries, nor a digest of all the reported decisions. He has sought to aid his brethren of the profession by stating as concisely as possible, the rules of law on the subject; by expounding the reasons for such rules as these are set forth in judicial decisions; by noting the conflict of opinion which exists on many points, and especially by referring only to those cases which bear directly and helpfully upon topics to which they are cited. In order to make these citations as useful as possible, recent cases have been preferred to older ones, whenever the discussions of principles and authorities have been equally valuable; reference has been given, not only to the official report, but to unofficial publications in which the case has appeared, and the date of each decision is noted."

This clear exposition of the contents of the work is but earnest of the clearness of statement and diction which is found in the entire work. The lawyer who thoroughly understands the reasons for the rules and their natural relationship, is powerfully prepared for proper discrimination, and is not in need of citing many cases to bring the mind of a court to a clear understanding of the law. This work affords the lawyer an opportunity to clearly understand the law of the subject, and is what every lawyer needs. There is more contained in the 501 pages of this work than in any work it has been our fortune to meet with, and is published by Banks and Company, Albany, N. Y.

CORRESPONDENCE.

LETTER FROM EX-VICE PRESIDENT STEVENSON ON THE JUVENILE COURT LAW.

To the Editor of the Central Law Journal:

I have read with pleasure the article entitled the Juvenile Court in Utah as a Branch of Equity, and the Constitutionality Thereof. The article is certainly an able one and it seems to me your argument is conclusive. The subject is one of deep interest and I am gratified that you have so ably presented it.

Very sincerely yours,

(Signed) A. E. STEVENSON.

Bloomington, Ill.

HUMOR OF THE LAW.

Judge—It would be more respectful to this court, sir, if you would keep your hands out of your pockets. Why do you do so, sir?

Defendant—Just for the novelty of the thing, your Honor.

Judge—Novelty! What d'ye mean?

Defendant—Fact is, your Honor, my attorney has had his hands in there so long I'm tickled to death to get a chance at them myself.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCIDENT INSURANCE—Erroneous Statement Against Interest.—Erroneous statement of insured innocently made against his own interest in statement to insurer after loss, held not ground for forfeiting his rights under the policy, though warranted to be true.—Wall v. Continental Casualty Co., Mo., 86 S. W. Rep. 491.

2. APPEAL AND ERROR—Appeal for Purpose of Delay.—A suggestion by an appellee that the appeal was taken for delay opens the record as to them though there was no error assigned affecting them.—Watziavzick v. D. & A. Oppenheimer, Tex., 85 S. W. Rep. 855.

3. APPEAL AND ERROR—Assignment of Error.—An assignment of error to the overruling of a motion to make

a paragraph of the complaint more specific cannot be considered, where the record does not show that such motion was made.—Consolidated Stone Co. v. Staggs, Ind., 73 N. E. Rep. 695.

4. APPEAL AND ERROR—Assumed Risk.—A servant held not prejudiced by an instruction submitting the issue of assumed risk, where the verdict in favor of defendant could not have been rendered except on a finding that defendant had not been guilty of any negligence.—Price v. St. Louis Southwestern Ry. Co. of Tex., 85 S. W. Rep. 858.

5. APPEAL AND ERROR—Contributory Negligence.—An erroneous charge on contributory negligence is harmless, where there is absolutely no evidence in the case tending to establish such negligence.—City of Indianapolis v. Cauley, Ind., 73 N. E. Rep. 691.

6. APPEAL AND ERROR—Finality of Judgment.—A judgment requiring a fund to be paid into court, declaring the priority of liens thereon to be afterwards established, and continuing the cause as to all the parties except the stakeholders, held not final.—E. L. Wilson Hardware Co. v. F. J. & R. C. Duff, Tex., 85 S. W. Rep. 786.

7. APPEAL AND ERROR—Findings of Fact.—Where it is contended that the findings of fact do not justify the judgment or decree, it is not necessary to except to the trial court's conclusions of law.—Adams v. Washington Brick, Lime & Mfg. Co., Wash., 80 Pac. Rep. 446.

8. APPEAL AND ERROR—General Assignment of Errors.—Certain general assignment of error held insufficent under court of civil appeals Rule 25 (67 S. W. Rep. xv).—Watzlavzick v. D. & A. Oppenheimer, Tex., 85 S. W. Rep. 855.

9. APPEAL AND ERROR—Intermediate Orders.—An order transferring a cause from the chancery to the circuit court held not appealable under Kirby's Dig., § 1188, subd. 2.—Womack v. Connor, Ark., 85 S. W. Rep. 783.

10. APPEAL AND ERROR—Jurisdiction on Question of Excessive Verdict.—The excessiveness of a verdict, in an action for injuries to a passenger, is a question of fact within the exclusive jurisdition of the court of civil appeals.—International & G. N. R. Co. v. Goswick, Tex., 85 S. W. Rep. 785.

11. APPEAL AND ERROR—Mandate and Proceedings Below.—Error does not lie to a judgment rendered in compliance with directions on remand from a reviewing court.—Chiles v. School Dist. of Buckner, Jackson County, Mo., 85 S. W. Rep. 880.

12. APPEAL AND ERROR—Notice of Appeal.—Notice of appeal in open court from an order modifying a judgment held to obviate the necessity of the service of a written notice of appeal on a surety on a bond to release an attachment, such surety having appeared in the action, under 2 Ballinger's Annot. Case & St., §§ 5374, 5375.—Brady v. Onffroy, Wash., 79 Pac. Rep. 1004.

13. APPEAL AND EREOR—Parties.—In a suit to foreclose a deed of trust on a homestead, failure of the court to dismiss certain *feme* defendants against whom no personal judgment was rendered from the case held not reversible error.—Fontaine v. Nuse, Tex., 85 S. W. Rep. 852.

14. APPEAL AND ERROR—Plea of Privilege.—Objection that plea of privilege to the jurisdiction was made too late held not to be raised for the first time on appeal.—Leahy v. Ortz, Tex., 85 S. W. Rep. 824.

15. APPEAL AND ERROR—Pleading in Replevin Case.—Defendant's possession of cattle seized under replevin not being disputed either in the pleadings or the evidence, plaintiff was not prejudiced by an instruction requiring it to prove such fact —Strahorn-Hutton Evans Commission Co. v. Heffner, Ark., 85 S. W. Rep. 784.

16. APPEAL AND ERROR—Questions of Fact.—Where a party fails to request the withdrawal of an issue of fact from the jury on the ground that it has been established by the evidence beyond question, he cannot complain on appeal of the court's failure to withdraw such issue.—International & G. N. R. Co. v. Vanlandingham, Tex., 85 S. W. Rep. 847.

17. APPEAL AND ERROR—Question of Jurisdiction of Appellate Court.—A question affecting the jurisdiction of the appellate court may be raised at any stage of the proceedings.—St Louis Southwestern Ry. Co. of Texas v. Hall, Tex., 85 S. W. Rep. 786.

18. APPEAL AND ERROR—Railroad Personal Injury Case.—In an action for injuries to a servant, the exclusion of evidence tending to show want of notice to plaintiff of a defect in defendant's track held harmless.—Price v. St. Louis Southwestern Ry. Co. of Texas, Tex., 85 S. W. Rep. 858.

19. APPEAL AND ERROR—Specific Instruction on Charge Given.—Where neither party was satisfied with a charge given on a particular issue, and both asked specific instructions thereon, which were given, plaintiff could not object that the giving of defendant's request was erroneous, as a repetition of the instruction in the main charge.—Price v. St. Louis Southwestern R f Texas, Tex., 85 S. W. Rep. 858.

20. APPEAL AND ERROR—Statement of Case.—A statement, under a proposition on appeal, merely referring to the transcript, held sufficient.—International & G. N. R. Co. v. Vanlandingham, Tex., 85 S. W. Rep. 847.

21. APPEAL AND ERROR—Statutory and Common Law Bonds.—Recovery on a common law bond held not authorized in an action distinctly one on a statutory bond.—Hillman v. Mayher, Tex., 85 S. W. Rep. 818.

22. ARMY AND NAVY—Court-Martial.—Expressed satisfaction of accused with the court-martial precludes collateral attack on its judgment because as many officers were not summoned as could be convened, as Act July 17, 1862, ch. 204, art. 11, 12 Stat. 603, required.—Bishop v. United States, U. S. S C., 25 Sup. Ct. Rep. 440.

23. ASSIGNMENTS—Trading Stamps.—Trading stamps held to be choses in action.—Sperry & Hutchinson Co. v. Hertzberg, N. J., 60 Atl. Rep. 368.

24. ATTORNEY AND CLIENT—Action to Recover for Legal Services.—In an action to recover for legal services, the answer held demurrable for not connecting a certain agreement alleged in the answer with the services for which recovery was sought.—Butler v. General Acc. Assur. Corp., 92 N. Y. Supp. 1025.

25. ATTORNEY AND CLIENT—Contract as to Land.—A power of attorney to recover an interest in an estate held not to limit compensation to a share of the personal property only.—Adams v. Schmidtt, N. J., 60 Atl. Rep. 345.

26. ATTORNEY AND CLIENT—Excusable Neglect.—Refusal of defendant's counsel to state to the court that he was misled by an amendment of the complaint held not to entitle defendant to set aside an adverse judgment, under Code Civ. Proc. § 724.—Carlisle v. Barnes, 92 N. Y. Supp. 924.

27. ATTORNEY AND CLIENT—Negligence in Loaning Client's Money.—In an action against an attorney for negligence is loaning plaintiff's money, the burden was not on the attorney to establish that the transaction was fair and honest —Schreiber v. Heath, 92 N. Y. Supp. 1043.

28. ATTORNEY AND CLIENT—Retainer.—On breach of a contract for attorney's services, plaintiff held entitled to recover the contract price, without proof of services performed under the contract, or their reasonable value.—Carlisle v. Barnes, 92 N. Y. Supp. 917.

29. BAILMENT—Duty and Liability of Bailee.—A contract by which the bailee and agent of a coal company agreed to be "responsible" to such company for all coal delivered to it for sale as agent construed, and held not to enlarge its common-law liability by making it an insurer.—Fairmount Coal Co. v. Jones & Adams Co., U. S. C. C. of App., Seventh Circuit, 134 Fed. Rep. 711.

30. BANKRUPTCY—Attachments.—Bankr. Act 1898, ch. 541, § 11, cl. 2, held not to confer jurisdiction on a court of bankruptcy to stay an attachment proceeding in a state court which had acquired jurisdiction of the parties, subject-matter, and property attached prior to the filing of the bankruptcy petition.—Tennessee Producer Marble Co. v. Grant, U. S. C. C. of App., Third Circuit, 135 Fed Rep. 322.

31. BANKRUPTCY—Concealment of Assets.—In a proceeding against an involuntary bankrupt to recover assets, evidence held to support a finding that the bankrupt had under her control the sum of $2,425, which she had concealed and refused to surrender to her trustee.—*In re* Cole, U. S. D. C., D. Me., 135 Fed. Rep. 439.

32. BANKRUPTCY—Discharge.—Where the fair inference is that a conveyance was intended to hinder creditors, the grantee therein did not for that reason hold the property within the "fiduciary capacity" of the bankrupt act, so that his liability was not released by a discharge in bankruptcy.—Reeves v. McCracken, N. J., 60 Atl. Rep. 332.

33. BANKRUPTCY—Involuntary Proceedings. — A new trial granted, on a petition in involuntary bankruptcy, on the ground of error in the court's instructions.—*In re* Marks Bros., U. S. D. C., E. D. Pa., 135 Fed. Rep. 448.

34. BANKRUPTCY — Nature of Suit.—A suit in equity, brought in the district court by a trustee in bankruptcy against a claimant of property, as authorized by Bankr. Act § 67e, is not a proceeding in bankruptcy, but an independent suit, and a decree or order therein is not subject to revision by the circuit court of appeals, under section 24b of the act.—Doroshow v. Ott, U. S. C. C. of App., Third Circuit, 134 Fed. Rep. 740.

35 BANKRUPTCY—Preferences.—Creditor of bankrupt, who in good faith received a preference, voidable under Bankr. Act, ch. 541, § 67e, and who retained in good faith the preference until deprived thereof by the trustee, may prove his debt, notwithstanding provision of section 57g.—Keppel v. Tiffin Sav. Bank, U. S. S. C., 25 Sup. Ct. Rep. 443.

36. BANKRUPTCY—Right to Oppose Discharge. — One who has a suit pending against a bankrupt for the recovery of a debt, which is contested, is a party in interest, and entitled to contest the bankrupt's right to a discharge, although his claim has not been proved in the bankruptcy proceedings.—*In re* Conroy, U. S. D. C., E. D. Pa., 134 Fed. Rep. 764.

37. BANKRUPTCY — Time for Claiming Exemption. — Where a notice of exemption is so general as not to indicate what specific articles the bankrupt claims as exempt, and he makes no request for specific articles until after the sale, the right of exemption is waived.—*In re* VonKerm, U. S. D. C., E. D. Pa., 135 Fed. Rep. 447.

38. BANKS AND BANKING—Diligence Required in Collecting on Commercial Paper.—Where a bank receives commercial paper for collection, the law implies a contract to use reasonable diligence.—Manhattan Life Ins. Co. v. First Nat. Bank, Colo., 80 Pac. Rep. 467.

39. BENEFIT SOCIETIES—By-Laws. — A member of a fraternal order is presumed to know and understand its rules and regulations —Sterling v. Head Camp, Pacific Jurisdiction, Woodmen of the World, Utah, 80 Pac. Rep. 375.

40. BENEFIT SOCIETIES—Delinquent Payment of Dues. —A mutual benefit organization itself may waive compliance with its by-laws, and provisions to prevent it from doing so are nugatory.—Cline v. Sovereign Camp Woodmen of the World, Mo., 86 S. W. Rep. 501.

41. BENEFIT SOCIETIES—Receipting for Dues.—An officer of a subordinate lodge of a mutual benefit association, who is authorized to receive and receipt for payments of monthly dues, may receipt therefor at the time of payment or at any time thereafter.—United Moderns v. Pistole, Tex., 86 S. W. Rep. 377.

42. BILLS AND NOTES—Defense of Fraud.—In an action on a note by an alleged *bona fide* holder the defense of fraud of the payee, without an allegation that defendants were not guilty of negligence in signing the note, held insufficient.—Brown v. Feldwert, Oreg., 80 Pac. Rep. 414.

43. BILLS AND NOTES—Protest and Notice to Indorsers. —Under the law merchant it is not a part of a notary's official duty, in protesting a note, to give notice of dishonor to an indorser, and his certificate that he sent such notice is not even *prima facie* evidence of such fact, in the absence of a statute making it so, or proof that the notary is not alive and capable of testifying.—Schofield v. Palmer, U. S. C. C., W. D Va., 134 Fed. Rep. 753.

44. BOUNDARIES—Original Survey.—On a resurvey of land to establish a lost boundary, the original corners, or the places where they were established, if they can be definitely determined, are conclusive, regardless of the correctness of their location.—Washington Rock Co. v. Young, Utah, 80 Pac. Rep. 382.

45. BRIBERY—Indictment.—Indictment held to sufficiently charge an attempt to bribe a peace officer.—Lee v. State, Tex., 85 S. W. Rep. 804.

46. BRIBERY—Instruction as to What Constitutes.—In prosecution for attempt to bribe a peace officer, a charge defining "bribe" in the language of Pen. Code 1895, art. 144, held proper.—Lee v. State, Tex., 85 S. W. Rep. 804.

47. BRIBERY—Legality of Arrest.—In a prosecution for attempt to bribe a peace officer, evidence held admissible to show the legality of the arrest.—Lee v. State, Tex., 85 S. W. Rep. 804.

48. BRIBERY—Variance of Evidence.—Evidence held not to constitute a variance from an indictment charging an attempt to bribe a peace officer.—Lee v. State, Tex., 85 S. W. Rep. 804.

49. BRIBERY—Who a Peace Officer.—A chief of police of a city, engaged in assisting a deputy sheriff to make an arrest, is a peace officer within the meaning of the statutes defining the offense of attempting to bribe a peace officer.—Lee v. State, Tex., 85 S. W. Rep. 804.

50. BROKERS—Unreasonable Printed Conditions on Back of Order.—Printed matter on back of orders for purchase and sale of stock on margins through a broker, not brought to the customer's knowledge, held void for unreasonableness and as against public policy.—Haight v. Haight & Freese Co., 92 N. Y. Supp. 934.

51. CANCELLATION OF INSTRUMENTS — Mortgage. — Where the defense of a foreclosure of a mortgage is clear and palpable, a suit to cancel the mortgage will not lie. —Reeves v. McCracken, N. J., 60 Atl. Rep. 332.

52. CARRIERS—Condemning Land.—The power to condemn land for the purpose of making connections with intersecting roads must be exercised by a railroad corporation.—Hudson Valley Ry. Co. v. Boston & M. R. R., 92 N. Y. Supp. 928.

53. CARRIERS—Delay in Transportation.—A shipper held entitled at least to nominal damages and costs for breach of contract by delay of carrier in transportation.—Crutcher v. Choctaw, O. & G. R. Co., Ark., 85 S. W. Rep. 770.

54. CARRIERS—Loss of Goods on Connecting Carrier. —Connecting carriers held not liable for the default of one in performing part of the transportation, where there was merely a traffic agreement for division of receipts or profits arising therefrom.—Wilson v. Louisville & N. R. Co., 92 N. Y. Supp. 1091.

55. CARRIERS—Premature Starting of Car.—It is the duty of a conductor on a single-track road, before starting a car, to look on both sides thereof to see if passengers are about to enter.—Redington v. Harrisburg Traction Co., Pa., 60 Atl Rep. 305.

56. CARRIERS — Presumption of Negligence. — Unexplained slipping of brake of street car, which strikes passenger in the face, held to authorize an inference of negligence.—Thompson v. St. Louis & S. Ry. Co., Mo., 86 S. W. Rep. 465.

57. CARRIERS — Wrongful Ejection of Passenger.—A judgment in favor of a passenger for $200 damages for wrongful ejection from a car on defendant's railroad affirmed, on the authority of Pullman's Palace Car Co. v. King, 99 Fed. 880, 39 C. C. A. 573 —Baltimore & O. R. Co. v. Kitchen, U. S. C. C. of App., Second Circuit, 135 Fed. Rep. 520.

58. CERTIORARI — Reception of Evidence. — Where prosecutor in *certiorari* obtains a rule to certify the facts found, and brings the cause to hearing without a return, he waives a complaint based on the insufficiency of the facts.—Willett v. Morse, N. J., 60 Atl. Rep. 362.

59. CHARITIES—Devise to Church.—A devise to the vestrymen of a church of property to be used as they may deem best for the interests of the church is not invalid because indefinite.—Biscoe v. Thweatt, Ark., 86 S. W. Rep. 432.

60. COLLISION—Excessive Speed at Night Without Lookout.—A steamer held solely in fault for collision with an anchored ship in the Columbia river in the night, on the ground that she was navigating without a lookout and was going at an excessive speed.—The Cy promene, U. S. D. C., D. Oreg., 135 Fed. Rep. 558.

61. COMPROMISE AND SETTLEMENT—Power of County Commissioners.—County commissioners cannot rescind a compromise of taxes and tax certificates in litigation and retain the proceeds after decree adjudging the certificates valid has become final.—Multnomah County v. Title Guarantee & Trust Co., Oreg., 80 Pac. Rep. 409.

62. CONSTITUTIONAL LAW—Due Process of Law.—Acts 1901, p. 283, ch. 117, allowing recovery of penalty and damages from a railroad company by the owner of land contiguous to its right of way, for its allowing Johnson grass to go to seed on the right of way, held not to deprive the company of property without due process of law.—Gulf, C. & S. F. Ry. Co. v. Henderson & Tompkins, Tex., 86 S. W. Rep. 371.

63. CONSTITUTIONAL LAW—Eight Hour Statutes.—Act Feb. 23, 1903 (St. 1903, p. 33, ch. 10), imposing a penalty on any one working more than eight hours a day in any mine, smelter, or mill for the reduction of ores, held not void under Const. Nev., art. 1, § 1, guarantying the right to acquire and possess property.—*Ex parte* Kair, Nev., 80 Pac. Rep. 463.

64. CONSTITUTIONAL LAW—Exemption of Railroad from Taxation.—When the conditions and considerations on which a valid grant of exemption from taxation was based have been met, a contract right exists, which cannot be impaired by a subsequent statute of modification or repeal.—Bennett v. Nichols, Ariz., 80 Pac. Rep. 392.

65. CONSTITUTIONAL LAW—Impairment of Contract Obligation.—The imposition on a gas company of cost of changes of location in pipes under city streets by construction of municipal drainage system, under Act La. July 9, 1896, held not to impair any contract rights.—New Orleans Gaslight Co. v. Drainage Commission of New Orleans, U. S. S. C., 25 Sup. Ct. Rep. 471.

66. CONSTITUTIONAL LAW—Jury Commissioner.—Acts 1904, p. 954, ch. 560, vesting in jury commissioners the power previously possessed by the sheriff of a certain county to select jurors, is not an unconstitutional infringement of the prerogative of the judiciary.—State v. McNay, Md., 60 Atl. Rep. 273.

67. CONSTITUTIONAL LAW—Retroactive Laws.—Laws 1903, p. 1071, ch 461, authorizing execution against the income of a trust fund, if applicable to a trust fund created in 1894, was unconstitutional, as being retroactive.—King v. Irving, 92 N. Y. Supp. 1094.

68. CONSTITUTIONAL LAW—Retroactive Statutes.—Act Ark., March 27, 1883 (Acts 1893, p. 169), construed, and held not retroactive, and does not apply to warrants issued before its passage.—Condon v. City of Eureka Springs, Ark., U. S. C. C., W. D. Ark., 135 Fed. Rep. 566.

69. CONSTITUTIONAL LAW—Service of Process on Foreign Insurance Company.—A statute of Pennsylvania, relating to foreign insurance companies and providing for service of process on the insurance commissioner, does not deny foreign insurance companies due process of law, within the inhibition of Const. U. S. Amend, 14.—Old Wayne Mut. Life Ass'n v. McDonough, Ind., 73 N. E. Rep. 703.

70. CONTEMPT—Failure to Pay Receiver Rent.—A tenant, not formally served with an order to pay rent to a receiver in foreclosure, held not guilty of contempt in refusing to comply therewith.—American Mortg. Co. v. Sire, 92 N. Y. Supp. 1082.

71. CONTRACTS—Charitable Society.—A contract whereby any property of which an inmate of an aged men's home may receive in the future is to become the property of the home is unenforceable, as against public policy.—Baltimore Humane Impartial Soc. and Aged Womens' and Aged Mens' Homes v. Pierce, Md., 60 Atl. Rep. 277.

72. CONTRACTS—Consideration.—In an action on an oral contract, it is not necessary for defendant to plead want of consideration after pleading a general denial, under which plaintiff has the burden of showing consideration.—Kennedy v. Swisher, Ind., 73 N. E. Rep 724.

73. CONTRACTS—Counsel's Brief.—An assignment of error will not be considered, where counsel's brief does not contain a concise statement of so much of the record as would fully present the question, as required by court rule 22 (27 N. E. vi).—Kennedy v. Swisher, Ind., 73 N. E. Rep. 724.

74. CONTRACTS—Trading Stamps.—There is no presumption that any particular scheme or plan of business, though lawful, is necessary or even specifically advantageous to the growth of commerce and the advance of civilization, and hence the trading stamp business is not *per se* one which the courts must protect.—Sperry & Hutchinson Co. v. Hertzberg, N. J., 60 Atl. Rep. 368.

75. CORPORATIONS—Claims for Labor Before Insolvency.—Claims for labor performed for a corporation just before its insolvency held entitled to preference over the claims of both ordinary and mortgage creditors.—L'Hote v. Boyet, Miss., 38 So. Rep. 1.

76. CORPORATION—Liability for Negligence of Predecessor—A corporation which succeeded to the business and all of the assets of a former company, and was to a large extent identical in membership, held responsible for damages caused by the negligence of its predecessor.—McWilliams v. City of New York, U. S. D. C., S. D. N. Y., 134 Fed. Rep. 1015.

77. CORPORATIONS—Power of Directors.—A contract made by the directors of a corporation for the publication of notices to its stockholders, advising them of a proposed scheme for exchanging its stock for that of another corporation, held to be within their general powers and binding on the corporation.—Rascover v. American Linseed Co., U. S. C. C. of App., Third Circuit, 135 Fed. Rep. 341.

78. CORPORATIONS—Stockholders' Liability Outside of State.—Stockholders' liability in an Ohio corporation cannot be enforced outside of that state, under Const. Ohio, art. 13, § 3, where an action in Ohio courts is alone contemplated by Rev. St. Ohio, 1880, § 3260, as amended in 1894.—Middletown Nat. Bank v. Toledo, A. A. & N. M. Ry. Co., U. S. S. C., 25 Sup. Ct. Rep. 462.

79. CORPORATIONS—Stock Subscription.—A written subscription to the stock of a corporation, which shows on its face that it is payable partly in cash and partly in the stock of another corporation, must be accepted, if at all, in conformity to its terms, and the corporation cannot retain the cash payment, issue the stock, and thereafter maintain an action against the subscriber to recover the difference as an unpaid subscription.—Southern Trust and Deposit Co. v. Yeatman, U. S. C. C. of App., Third Circuit, 134 Fed. Rep. 810.

80. COUNTIES—Authority of County Board.—A committee of a county board, required to report plans for a court house on April 1, 1903, held without power to extend the time for submission of plans by architects to April 21, 1903.—Kinney v. Manitowoc County, U. S. C. C. of App., Seventh Circuit, 135 Fed. Rep. 491.

81. COUNTIES—Defalcation of County Treasurer.—In an action by a school city treasurer to recover money alleged to be due him in his official capacity, evidence held sufficient to sustain a finding that the money had been converted by a county treasurer.—Demarest v. Holdeman, Ind., 73 N. E. Rep. 714.

82. COURTS—Constitutional Questions.—Under the express provisions of Burns' Ann. St. 1901, § 1337i, and Acts 1901, p. 566, ch. 247, § 9, the supreme court has exclusive jurisdiction of appeals involving the constitutionality of a statute.—Clark v. American Cannel Coal Co., Ind., 73 N. E. Rep. 727.

83. COURTS—Jurisdictional Amounts.—Petition considered, and held to ask damages exceeding $1,000, and

the county court had no jurisdiction.—Western Union Tel. Co. v. Hawkins, Tex., 85 S. W. Rep. 847.

84. COVENANTS—Constructive Eviction.—Where paramount title to land is in the state it constitutes an exception to the rule that there must be an assertion thereof to amount to a constructive eviction.—Seldon v. Dudley E. Jones Co., Ark., 85 S. W. Rep. 778.

85. COVENANTS—Construction of "Grant, Bargain and Sell."—Under the direct provisions of Kirby's Dig. § 731, the words "grant, bargain, and sell," in a deed, import that the grantor is seised of an indefeasible estate in fee simple free from incumbrances done or suffered by the grantor.—Seldon v. Dudley E. Jones Co., Ark., 85 S. W. Rep. 778.

86. COVENANT—Unassigned Dower Lands.—Possession of unassigned dower lands, excepting manor house and homestead, held to be in heirs at law, so that mere assertion of claim for dower in wild and unimproved lands is not tantamount to eviction, so as to constitute a breach of covenant against incumbrances.—Seldon v. Dudley E. Jones Co., Ark., 85 S. W. Rep. 778.

87. CRIMINAL EVIDENCE—Materiality of False Testimony.—Testimony in answer to a question as to the playing of games of chance for money at a place not a private residence held material to the inquiry, so as to constitute perjury, though the question did not state that the playing was at a place other than a private residence.—Foreman v. State, Tex., 85 S. W. Rep. 809.

88. CRIMINAL EVIDENCE—Perjury.—Under an indictment charging perjury in testifying that defendant did not see named persons bet upon a game of chance during a certain year, evidence that defendant saw such game played on three or four different occasions by the parties named in the indictment was properly admitted —Foreman v. State, Tex., 85 S. W. Rep. 809.

89 CRIMINAL EVIDENCE—Res Gestæ in Murder Case.—Where the evidence shows that the prisoner ran from the store of the deceased, who was crying "Police! Thief!" and the prisoner shot him, the cries of the deceased were admissible as part of the *res gestæ*.—State v. Laster, N. J., 60 Atl. Rep. 361.

90. CRIMINAL LAW—Forging School Warrants.—It is not error, in a prosecution for forging a school warrant, to ask the chairman of the county board of public instruction how he signed school warrants.—Wooldridge v. State, Fla., 38 So. Rep. 3.

91. CRIMINAL TRIAL—Forgery.—In a prosecution for forgery, a witness acquainted with the handwriting of the accused may be asked whether the handwriting in the body of certain warrants was that of the accused.—Wooldridge v State, Fla., 3, 30 So. Rep. 3.

92. DAMAGES—Breach of Contract.—In an action for breach of contract to permit plaintiff to erect and conduct business booths on defendant's premises, evidence as to rental value of, and probable gross receipts from, booths held inadmissible.—Benyakar v. Scherz, 92 N. Y. Supp. 1089.

93. DAMAGES—Mental Pain and Bodily Suffering.—Mortification and distress of mind, in contemplation of the crippled condition, held too remote to constitute an element of damage in an action for personal injury.—Southern Pac. Co. v. Hetzer, U. S. C. C. of App., Eighth Circuit, 135 Fed. Rep. 272.

94. DEDICATION—Damages for Land Taken for Street.—Where a city lays out a street on the land of a private owner, there is no implication of a covenant against the owner to give the land to the public without compensation.—Fitzell v. City of Philadelphia, Pa., 60 Atl. Rep. 323.

95. DEEDS—Executed Gifts.—In a suit to set aside a deed of complainant's interest in her brother's estate, evidence held insufficient to establish that complainant was induced to execute the deed by fraudulent representations.—Fowler v. Fowler, U. S. C. C., M. D. Pa., 135 Fed. Rep. 405.

96. DEPOSITIONS—Sufficiency of Objections.—A general objection to a question asked a witness, on the taking of his deposition, as immaterial and irrelevant, without stating any specific ground, was properly overruled.—Texas & P. Ry. Co. v. Coutourie, U. S. C. C. of App., Second Circuit, 135 Fed. Rep. 465.

97. DISMISSAL AND NONSUIT—Want of Prosecution.—It is the duty of a party to be present in court when his case is called, and to ask a postponement of the same on the absence of his attorney.—Harrison v. Oak Cliff Land Co., Tex., 85 S. W. Rep. 821.

98. DISORDERLY HOUSE—Elements of the Offense.—In a prosecution for keeping a disorderly house, a certain charge as to the necessary elements of the offense held not required by the evidence.—Stone v. State, Tex., 85 S. W. Rep. 807.

99. DISORDERLY HOUSE—Ownership.—In a prosecution for keeping a disorderly house, evidence that defendant was in possession, or had actual control, care, and management, of the house, was sufficient to establish ownership for the purpose of the prosecution, although he was neither owner, lessee, nor tenant.—Stone v. State, Tex., 85 S. W. Rep. 807.

100. DIVORCE—Alimony.—In divorce the amount of alimony allowed the successful plaintiff held not unreasonable.—Baker v. Baker, Ky., 85 S. W. Rep. 729.

101. EMINENT DOMAIN—Damages for Widening Street. Grantor of a lot bounded by a city street held entitled to damages to other property adjoining when street is widened, and not estopped by any implied covenant in his deed giving the grantee an easement in such 10 feet.—Fitzell v. City of Philadelphia, Pa., 60 Atl. Rep. 323.

102. EQUITY—Necessary Parties.—A corporation held to be an indispensable party to a suit by the United States for the annulment of a contract, without whose presence the court could not determine the case on its merits.—United States v. Northern Pac. R. Co., U. S. C. C. of App., Eighth Circuit, 134 Fed. Rep. 715.

103. EVIDENCE—Action to Enjoin Encroachment on Street—In an action to enjoin encroachment on public street, recorded deed executed in 1806 and map of premises attached thereto held admissible as ancient documents.—Village of Oxford v. Willoughby, N. Y., 73 N. E. Rep. 677.

104. EVIDENCE — Fire Agent's Liability to Insurance Company.—Receipts of an insured to insurer for the amount of a loss held inadmissible in an action by the insurer against his agent for negligently permitting the insurer to remain on the risk after notice to him to reduce the amount.—British American Ins. Co. v. Wilson, Conn., 60 Atl. Rep. 293.

105. EXCHANGE OF PROPERTY—Fraudulent Misrepresentations.—In a suit in equity to rescind an exchange of real estate for fraudulent representations, proof of defendant's knowledge of the falsity of such representations is not required.—Du Bois v. Nugent, N. J., 60 Atl. Rep. 339.

106. EXECUTION—Property Subject to Ancestor's Debts.—The judgment creditor of an heir, on levy of execution, simply represents the heir, and takes the property subject to the ancestor's debts.—Lippincott v. Smith, N. J., 60 Atl. Rep. 330

107. EXECUTORS AND ADMINISTRATORS—Appointment Pendente Lite.—Administrators *pendente lite* may be appointed, where the appointment of a general administrator is delayed, or the validity of a will is contested.—Davenport v. Davenport, N. J., 60 Atl. Rep. 379.

108. FEDERAL COURTS—Jurisdiction.—Where the statement of a claim in a federal court disclosed neither diverse citizenship nor a federal question, a mere allegation that defendants were liable under Rev. St §§ 1979 1980 [U. S. Comp. St. 1901, p. 1262], held insufficient to establish federal jurisdiction.—United States v. Bell, U. S. C. C. of App., Third Circuit, 135 Fed. Rep. 336.

109. FIRE INSURANCE—Rates.—Where the rate was left blank in a binder for fire insurance, because not yet established, the contract bound both parties to such rate as might be so fixed.—British American Ins. Co. v. Wilson, Conn., 60 Atl Rep. 293.

110. FRAUDULENT CONVEYANCES—Husband and Wife.—Where husband and wife bought land to be conveyed to them as tenants by the entireties, but it was conveyed to him to have title quieted and then to have the title vested in them as tenants by the entirety, which he did, held, the question of the conveyance being fraudulent as to his creditors was the same as though it was made in the first place to husband and wife.—Cannon v. Castleman, Ind., 73 N. E. Rep. 689.

111. GRAND JURY—Selection.—Where 23 qualified jurors are impaneled and sworn at the organization of the grand jury, the subsequent excusing of one of them does not invalidate such jury.—State v. McNay, Md., 60 Atl. Rep. 273.

112. HABEAS CORPUS—Remedy where Convicted Under Void Statute.—Where one is imprisoned on a conviction under a statute entirely void, the remedy is *habeas corpus*.—*Ex parte* Kair, Nev., 80 Pac. Rep. 463.

113. INDIANS—Public Lands.—A restriction on alienation in a deed of the United States to Indians under treaty stipulations held valid.—Jackson v Thompson, Wash., 80 Pac. Rep. 454.

114. INDICTMENT AND INFORMATION—Different Assignments.—Where an indictment for perjury contains but one allegation of perjury, which is presented in two assignments, there is but one count, so that a motion to require the state to elect upon which "count" it will proceed is properly denied.—Foreman v. State, Tex., 85 S. W. Rep. 809.

115. INJUNCTION—Adequate Remedy at Law.—Equity has no jurisdiction to enjoin a single trespass on agricultural lands, where the probable injury is not irreparable.—Indian Land & Trust Co. v. Schoenfelt, U. S. C. C. of App., Eighth Circuit, 135 Fed. Rep. 484.

116. INJUNCTION—Pleading.—The effect of facts pleaded in a suit for injunction as affecting the relief demanded will not be considered on demurrer.—Straus v. American Publishers' Ass'n, 92 N. Y. Supp. 1052.

117. INNKEEPERS—Custody of Baggage.—Where plaintiff delivered baggage to a hotel when not a guest, an inference that the baggage was still in the hotel when plaintiff later became a guest held justified.—Oriental Hotel Ass'n v. Faust, Tex., 86 S. W. Rep. 373.

118. INTOXICATING LIQUORS—Local Option.—Evidence held to show a sale of liquor in licensed instead of local option territory.—Owens v. State, Tex., 85 S. W. Rep. 794.

119. INTOXICATING LIQUORS—Statutory Bond.—A liquor dealer's bond having but one surety held not a valid statutory bond.—Hillman v. Mayher, Tex., 85 S. W. Rep. 818.

120. JUDGES—Civil Liability for Judicial Acts.—Judges of the courts of common pleas of Pennsylvania held exempt from civil liability for acts done by them in the exercise of their judicial functions.—United States v. Bell, U. S. C. C. of App., Third Circuit, 135 Fed. Rep. 836.

121. JUDGMENT—Action on Foreign Judgment.—Under Const. U. S. art. 4, § 1, as to the faith to be given to judicial records of another state, where it appears from the transcript of a foreign judgment that the court had a judge, clerk, and seal, it will be presumed that the court had jurisdiction of the subject-matter and the parties.—Old Wayne Mut. Life Ass'n v. McDonough, Ind., 73 N. E. Rep. 703.

122. JUDGMENT—Effect on Attachment.—The owners of chattels held not affected by a judgment in favor of one attaching them as the property of another.—Monroe v. Mattox, Ky., 85 S. W. Rep. 748.

123. JUDGMENT—Joint Action.—Under the common-law rule, where, in an action against the maker and indorser of a note, a defense interposed by one defendant, which pertains to both, is sustained, plaintiff is not entitled to judgment against either.—Schofield v. Palmer, U. S. C. C., W. D. Va., 134 Fed. Rep. 753.

124. LANDLORD AND TENANT—Breach of Contract to Accept Lease.—Extent of remedy for breach of contract to accept and enter into a lease held the forfeiture of the stipulated damages deposited as evidence of good faith.—Schlumpf v. Sasake, Wash., 80 Pac. Rep. 457.

125. LANDLORD AND TENANT—Lease of Building for Saloon.—A landlord who joined in remonstrance, whereby the tenant was prevented from conducting a liquor business in the leased premises, held not liable to the tenant for a constructive eviction.—Kellogg v. Lowe, Wash., 80 Pac. Rep. 458.

126. LANDLORD AND TENANT—Liability for Rent.—A tenant from month to month, having been notified to quit on or before the 1st day of the succeeding month, held not liable for rent for the remainder of the month.—Cornelius v. Rosen, Mo., 86 S. W. Rep. 500.

127. LARCENY—Circumstantial Evidence.—Where, in a prosecution for theft from the person, a witness testified that he saw defendant take the property, no charge on circumstantial evidence was required.—Aladin v. State, Tex., 86 S. W. Rep. 327.

128. LARCENY—Sufficiency of Evidence.—It is not necessary to a conviction for larceny of money that the money, or any part of it, should be shown to have been in defendant's possession.—Dimmick v. United States, U. S. C. C. of App., Ninth Circuit, 135 Fed. Rep. 257.

129. LIFE INSURANCE—Deduction of Unpaid Premiums.—Condition on back of insurance policy, providing for deduction of unpaid portion of annual premium, held inapplicable to a policy which expressly makes premiums payable semi-annually.—Bracher v. Equitable Life Assur. Soc., 92 N. Y. Supp. 1105.

130. MANDAMUS—Examination of Corporation's Books.—A director of a corporation held entitled to *mandamus* against the president and treasurer to compel them to exhibit the corporation's books and papers.—People v. Columbia Paper Bag Co., 92 N. Y. Supp. 1084.

131. MASTER AND SERVANT—Duty to Discharge Incompetent Servant.—A master must discharge a servant for habits of negligence, or drunkenness, or lack of skill, of which he has notice.—Southern Pac. Co. v. Hetzer, U. S. C. C. of App., Eighth Circuit, 135 Fed. Rep. 272.

132. MASTER AND SERVANT—Engineer and Oiler Fellow-Servants.—An engineer on a steamship is a fellow-servant of an oiler in the engine room, and his negligence, resulting in an injury to the oiler, creates no liability on the part of the ship.—McCarron v. Dominion Atlantic Ry. Co., U. S. D. C., D. Mass., 134 Fed. Rep. 762.

133. MASTER AND SERVANT—Railroad Yard Rules.—A yard rule of a railroad company held explicit, and sufficient to protect a train on the main track within the yard limits from collision with a switch train in the yard.—Rosney v. Erie R. Co., U. S. C. C. of App., Second Circuit, 135 Fed. Rep. 311.

134. MORTGAGES—Release of Surety on Bond.—Where the bond of a mortgagor has been released, and he has no longer any interest in the land, he cannot defend an action on a *scire facias*.—Evans v. Wilmer, Pa., 60 Atl. Rep. 312.

135. MUNICIPAL CORPORATIONS—Defective Streets.—In an action against a city for injuries received by stepping into a depression in the surface of the street when alighting from a street car at night, evidence held to sustain verdict for plaintiff.—Walker v. City of Philadelphia, Pa., 60 Atl. Rep. 318.

136. MUNICIPAL CORPORATIONS—Public Improvements.—That the only use made of a lot abutting on a street improvement is for railroad right of way does not make assessment thereon for paving, under the area rule prescribed by Ky. St. §§ 2833, 2834, invalid under Const. U. S. Amend. 14.—Louisville & N. R. Co. v. Barber Asphalt Pav. Co., U. S. S. C., 25 Sup. Ct. Rep. 466.

137. NEGLIGENCE—Question for Jury.—Where different minds might honestly draw from the testimony different conclusions, material question remaining in substantial dispute is in the province of the jury.—Ferguson v. Central R. Co. of New Jersey, N. J., 60 Atl. Rep. 382.

138. NEGLIGENCE—Stevedore's Negligence in Failing to Report.—Held sufficient to charge a stevedore with contributory negligence in failing to report a defect in a cable, by the parting of which he was subsequently

injured.—The Tresco, U. S. C. C. of App., Third Circuit. 134 Fed. Rep. 819.

139. OFFICERS OF UNITED STATES—Liability for Private Property Taken.—If an officer of the United States takes the property of a private person for public use without compensation, he is liable in tort for the trespass, although the government may also be liable on an implied contract.—O'Reilly De Camara v. Brooke, U. S. D. C., S. D. N. Y., 135 Fed. Rep. 884.

140. PARTNERSHIP—Novation of Parties to Contract.—An express agreement is not requisite for a novation or substitution of parties to a contract, as it may be implied.—J. H. Lane & Co. v. United Oilcloth Co., 92 N. Y. Supp. 1061.

141. PARTNERSHIP—Settlement Charges and Credits.—Under contract fixing price of furniture and instruments furnished by partner for use in business, such partner held entitled to credit for sum fixed in adjusting partnership affairs, less any amount paid by the other partner on the purchase price.—Neal v. Abel, 92 N. Y. Supp. 1045.

142. PHYSICIANS AND SURGEONS — Care Required in Setting Bone.—A physician employed to set a broken bone does not guaranty a good result, but only impliedly promises to use the reasonable care, skill, and learning of the average physician.—MacKenzie v. Carman, 92 N. Y. Supp. 1068.

143. PLEADING—Confession and Avoidance.—A separate affirmative defense in the nature of a confession and avoidance defeats the action, notwithstanding a general denial accompanying the same.—Stratton's Independence v. Dines, U. S. C. C. of App., Eighth Circuit, 135 Fed. Rep. 449.

144. PRINCIPAL AND AGENT — Fire Insurance Companies.—A request to an agent from his principal for action in the line of the agency is equivalent to a command.—British American Ins. Co. v. Wilson, Conn., 60 Atl. Rep. 293.

145. PUBLIC LANDS—Effect of Uncanceled Prima Facie Valid Entry.—A homestead entry in Oklahoma territory, valid on its face, by one in fact personally disqualified, prevents the initiation of homestead rights by another while it is uncanceled and not relinquished.—McMichael v. Murphy, U. S. S. C., 25 Sup. Ct. Rep. 460.

146. PUBLIC LANDS—Power of Congress.—The power of congress over the public lands is plenary, so long as the title thereto remains in the government.—Oregon Short Line R. Co. v. Quigley, Idaho, 80 Pac. Rep. 401.

147. RAILROADS—Crossing Accident.—Where a driver could have seen a train approaching by ordinary care, the railroad company was not liable for failure to provide a watchman at the crossing.—Cowen v. Dietrick, Md., 60 Atl. Rep. 282.

148. RECEIVERS—Leave to Sue.—Where a suit to foreclose was brought against a receiver in the court in which he was appointed, it would be presumed, in the absence of evidence to the contrary, that leave was obtained to sue.—Payson v. Jacobs, Wash., 80 Pac. Rep 429.

149. SALES—Offer to Deliver a Question for Jury.—In an action for breach of contract for the sale of iron, whether the plaintiff had, within the time specified in the contract, offered to deliver the iron to defendant, held a question for the jury.—Sloss Iron & Steel Co. v. Jacobson Architectural Iron Works, 92 N. Y. Supp. 1056.

150. SALES—What Law Governs.—Where a contract as to chattels is made in another state between a resident thereof and a New Jersey corporation, and is to be performed there, the law of that state governs.—Lees v. Harding, Whitman & Co., N. J., 60 Atl. Rep. 352.

151. SEAMAN—Injury in Service.—A seaman, injured in the service of the ship, is entitled to wages for the term of his shipment, where that extends beyond the termination of the voyage.—McCarron v. Dominion Atlantic Ry. Co., U. S. D. C., D. Mass., 134 Fed. Rep. 762.

152. SHIPPING—Allowance for Extra Pilotage.—A master has authority to bind his vessel to pay for extra pilotage service rendered at his request.—The Cervantes U. S. D. C., S. D. N. Y., 135 Fed. Rep. 573.

153. SHIPPING - Dumping of Cargo by Barge.—A barge held liable for the value of copper ore, which she dumped while discharging a steamship, through her unseaworthiness for the business.—The Willie, U. S. D. C., S. D. N. Y., 134 Fed. Rep. 759.

154. STIPULATIONS—Binding Effect on Court.—Stipulation that escape of immigrants received on steamship for deportation did not occur by any negligence held binding on the courts.—H. Hackfeld & Co. v. United States, U. S. S. C , 25 Sup. Ct. Rep. 456.

155. TAXATION — Over-Assessment. — An estimate of property by the board of supervisors in excess of its actual value cannot be remedied in a suit by the taxpayer to enjoin the collection of the tax —Johnson v. Bradley-Watkins Tie Co., Ky., 85 S W. Rep. 726.

156. TAXATION—Provision as to Other Taxes in Tax Sale Judgment.—Provision in a judgment, that sale for taxes shall be subject to the lien of other taxes, held binding, though erroneous, as contrary to statute.—Burton v. City of Louisville, Ky., 85 S. W. Rep. 727.

157. TAXATION—Redemption from Tax Sale. In a suit by a person after reaching majority to redeem from tax sales the holder under the tax title held liable for rents only which accrued subsequent to the attempted redemption.—Hodges v. Harkleroad, Ark., 85 S. W. Rep. 779.

158. TAXATION — Tax Title.—Judgment in a sale for taxes held binding on one who at the time of its entry had contracted to purchase the land, and to whom deed did not pass until after the judgment.—Plumb v. Dyas, Wash., 80 Pac. Rep. 432.

159 TAXATION—Validity of Assessment.—Under the direct provisions of Burns' Ann. St. 1901, § 8633, an assessment of land for taxation in a name other than that of the owner does not render the assessment invalid.—Fell v. West, Ind., 73 N. E. Rep. 719.

160. TENANCY IN COMMON—Adverse Possession.—Adverse possession of an entire survey under color of title from 1866 to 1894 held sufficient to bar the right of a tenant in common not under disability.—Broom v. Pearson, Tex., 85 S. W. Rep. 790.

161. TENANCY IN COMMON—Partition.—The guardian of a minor tenant in common cannot sell the interests of others in the land merely because all of the interests so held in common are chargeable with common debts.—Broom v. Pearson, Tex., 85 S W. Rep. 790.

162. TENANCY IN COMMON—Sale of Specific Parcels.—Co-tenants of land cannot be prejudiced by a conveyance of specific parcels by other co tenants in which they are not concerned.—Broom v. Pearson, Tex., 85 S. W. Rep. 790.

163. TENANTS IN COMMON—Married Women.—Where two co tenants were married women, limitations could only be established against them by proof that the statute commenced to run before their respective marriages, or that the bar had operated since the passage of the statute abolishing the disability of coverture.—Broom v. Pearson, Tex., 85 S. W. Rep. 790.

164. TOWAGE—Negligence of Tug.—Where the striking of a barge in tow against the cribbing of a city bridge was due to the fault of the tug, she cannot shift the liability upon the city on the ground that, if the cribbing had been in perfect condition, the collision would not have injured the barge.—The Maurice, U. S. C. C. of App., Third Circuit, 135 Fed. Rep. 516.

165. TRIAL—Argument of Counsel.—Counsel may in argument arraign the conduct of parties or assail the credibility of witnesses, when impeached by evidence or circumstances.—Commonwealth Electric Co. v. Rose, Ill., 73 N. E. Rep. 780.

166. TRIAL — Effect of Motion for Verdict by Both Parties.—Where both parties move for direction of a verdict, it is an affirmance on the part of each that there is no disputed question of fact which could operate to deflect or control the questions of law.—West v. Roberts, U. S. C. C. of App., Sixth Circuit, 135 Fed. Rep. 350.

167. TRIAL—Hearing at Special Terms.—While under Ky. St. 1903, § 964, civil cases may be heard at any term, yet the court may, in the absence of objection by the parties, set civil cases for specified terms, and no others.—Hill's Adm'r v. Penn. Mut. Life Ins. Co., Ky., 85 S. W. Rep. 759.

168. TRIAL—Motion to Strike Out Testimony.—A motion to strike out a witness' testimony as to declarations of testator held properly denied, where some of such declarations were clearly admissible.—Appeal of Spencer, Conn., 60 Atl. Rep. 289.

169. TRIAL—Striking Cause from Calendar.—Where the issues and date of issue have been changed by service of replies under leave of appellate division, the issues could be brought to trial only on the service of a new notice and the filing of a new note of issue.—Ward v. Smith, 92 N. Y. Supp. 1107.

170. TRUSTS—Burden of Enhancing Rental Value.—Improvements in real estate, made to enhance the rental value, should be charged to the life tenants and not to the remaindermen of the trust estate.—*In re* Parr, 92 N. Y. Supp. 990.

171. TRUSTS—Foreign Corporations.—As it is the policy of the laws of the state not to permit trust property to be taken out of the state, there is an implied prohibition against foreign corporations acting as executors.—*In re* American Security & Trust Co., 92 N. Y. Supp. 974.

172. UNITED STATES—Jurisdiction of Federal Courts.—In the absence of any special statute providing otherwise, the jurisdiction of a federal court of a suit by the United States falls within the general grant of jurisdiction to such courts.—United States v. Northern Pac. R. Co., U. S. C. C. of App., Eighth Circuit, 134 Fed. Rep. 715.

173. VENDOR AND PURCHASER—Sunday the Last Day of Option Period.—The Sunday on which the last day of the period within which one having an option might purchase land fell, held not to be included in computing the time.—Smith v. Russell, Colo., 80 Pac. Rep. 474.

174. WILLS—Bequest or Devise.—Where testator provided for an allowance to his daughter, it should be treated as a bequest, rather than a devise, though the estate consisted almost entirely of realty.—McCullough v. Lauman, Wash., 80 Pac. Rep. 441.

175. WILLS—Death of Sole Beneficiary Before Testatrix.—Probate of a will will not be denied, because the sole legatee and devisee and executrix died before the testratrix.—*In re* Davis' Will, 92 N. Y. Supp. 968.

176. WILLS—Declarations of Testator.—A declaration of testator that he had made a will in favor of his wife to keep her quiet held inadmissible.—Appeal of Spencer, Conn., 60 Atl. Rep. 289.

177. WILLS—Nature of Estate Devised.—Where lands are devised to A in language indeterminate as to the quantity of the estate, and an express power is given to A to dispose of the same without qualification, it passes the fee to A.—Tuerk v. Schueler, N. J., 60 Atl. Rep. 357.

178. WILLS—Revocation of Joint Will.—Joint will by husband and wife of separate property may be revoked by either, in absence of valuable consideration to support it.—Buchanan v. Anderson, S. Car., 50 S. E. Rep. 12.

179. WILLS—Rights of Infant to Redeem from Tax Sale.—Under testator's will, a child of testator's brother held the owner of land devised to testator's brother for life with remainder to his children, during the lifetime of the life tenant, within the statutes relating to the redemption from tax sales by minors.—Hodges v. Harkleroad, Ark., 85 S. W. Rep. 779.

180. WILLS—Signature.—Where a will was alleged not to have been signed as required by statute, instruction that under the evidence such will is not signed as required by statute held proper.—Irwin v. Jacques, Ohio, 73 N. E. Rep. 683.

181. WILLS—Testamentary Capacity.—To have testamentary capacity, testator must understand the nature of the business and the nature and extent of his property, and recollect the objects of his bounty.—Hartley v. Lord, Wash., 80 Pac. Rep. 438.

182. WILLS—Undue Influence.—The presumption of undue influence, arising where a ward makes a will in favor of her guardian, will defeat the will, unless it is overcome by counter proof.—*In re* Cowdrey's Will, Vt., 60 Atl. Rep. 141.

183. WILLS—Unnatural Disposition of Property.—On a contest of a will properly executed in form, contestant has the burden of showing the will not the free and intelligent act of testator, even though there is an unnatural disposition of property.—*In re* Warnock's Will, 92 N. Y. Supp. 643.

184. WITNESSES—Credibility.—Ballinger's Ann. Codes and St. § 5992, held not to disqualify a person convicted of a crime other than perjury from testifying as a witness by reason of his admission that he committed perjury on a former trial.—State v. Pearson, Wash., 79 Pac. Rep. 985.

185. WITNESSES—Cross-Examination.—Where a witness volunteers the information that he was "fined," he cannot complain of the question in response to which he gave such information, which merely asked whether he had been "arrested."—State v. Nergaard, Wis., 102 N. W. Rep. 899.

186. WITNESSES—Employers' Liability Insurance.—Evidence that a corporation, sued for injury to an employee, carries employers' liability insurance, held inadmissible to show the interest of the president of the corporation as a witness.—Lowset v. Seattle Lumber Co., Wash., 80 Pac. Rep. 431.

187. WITNESSES—Evidence of Reputation.—Where the reputation of a witness for truthfulness is assailed, the party calling him has the right to introduce testimony to show that his reputation not only is good at the time, but that it has always been good.—Dimmick v. United States, U. S. C. C. of App., Ninth Circuit, 135 Fed. Rep. 257.

188. WITNESSES—Impeachment.—Rule that a party cannot impeach his own witness held not to preclude defendant from discrediting a statement of plaintiff, whom he had called as a witness.—Carney v. Hennessey, Conn., 60 Atl. Rep. 129.

189. WITNESSES—Impeachment.—In order to lay the foundation for the contradiction of a witness, it is necessary that he should be apprised of the time, place, and the person to whom it is contended he made the statement.—State v. Marks, S. Car., 50 S. E. Rep. 14.

190. WITNESSES—Refreshing Memory.—Conductor of street car, in action for injuries to passenger, held entitled to refresh his memory by memorandum taken by him at the time of the accident.—Clark v. Union Traction Co., Pa., 60 Atl. Rep. 302.

191. WITNESSES—Refusing Recall for Further Cross-Questioning.—The refusal of the trial court to permit a witness to be recalled for further cross-examination is within its discretion.—United States Wringer Co. v. Cooney, Ill., 73 N. E. Rep. 803.

192. WITNESSES—Testimony of Physician.—Burns' Ann. St. 1901, § 505, held not to forbid a physician to testify to the fact of his employment by a patient.—Haughton v. Ætna Life Ins. Co., Ind., 73 N. E. Rep. 592.

193. WITNESSES—Wife as a Witness Against Bigamist Husband.—The second wife of a bigamist held a competent witness against him.—Murphy v. State, Ga., 50 S. E. Rep. 48.

194. WORK AND LABOR—Value of Plans and Specifications for Court House.—The price agreed to be paid certain architects for plans and specifications for a court house held no evidence of the reasonable value of the use of certain plans furnished.—Kinney v. Manitowoc County, U. S. C. C. of App., Seventh Circuit, 135 Fed. Rep. 491.

195. WORK AND LABOR—Value of Services.—An allegation in a petition for services that they were reasonably worth $30 per month held not an allegation that they were to be paid for monthly.—Stapper v. Wolter, Tex., 85 S. W. Rep. 850.